Supreme Court, U. S.
FILED
JUL 25 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 197.....

No. 74-11

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DAVID I. CAPLAN
Attorney for Petitioner
250 West 94th Street
New York, New York 10025

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	3
Nature of the Case	3
Course of Proceedings in the District Court	5
Dispositions in the Courts Below	6
Statement of Facts	7
Basis for Federal Jurisdiction in the Court of First Instance	9
Reasons Why the Writ Should Be Granted	10
I. Introduction	10
II. The Court of Appeals Has Decided an Important Question of Federal Law in Conflict With Applicable Decisions of This Court	15
III. Fundamental and Widespread Public Importance of the Issues in This Case	19
A. Historical Background	19
B. Fundamental Dangers of Arms Record-Keeping Today	28
C. The Tragic Second Amendment Lesson of the Ill-Fated Uprising of the Jews in the Warsaw Ghetto	31
D. Widespread Interest in the Gun Control Constitutional Issues	34
Summary and Conclusion	35

TABLE OF AUTHORITIES

Cases:

PAGE

Andrews v. State, 3 Heisk. (50 Tenn.) 165, 8 Am. Rep. 8 (1871) 26, 37
Associated Press v. Labor Board, 301 U.S. 103 (1937) 38
Aymette v. State, 2 Humphr. (21 Tenn.) 154 (1840) 38

Bivens v. Six Unknown Federal Narc. Agents, 403 U.S. 388 (1971) 12

Calero-Toledo v. Pearson Yacht Leasing Co., 42 U.S.L.W. 4693 (U.S., May 15, 1974) 35
California Bankers Ass'n v. Shultz, 42 U.S.L.W. 4481 (U.S., April 1, 1974) 37
Coffman v. Breeze Corporations, 323 U.S. 316 (1945) 13

Fife v. State, 31 Ark. 455 (1876) 16

Gilligan v. Morgan, 413 U.S. 1 (1973) 29
Griswold v. Connecticut, 381 U.S. 479 (1965) 5

Hagans v. Lavine, 42 U.S.L.W. 4381 (U.S., March 25, 1974) 15, 18
Hague v. CIO, 307 U.S. 496 (1939) 11
Hannis Distilling Co. v. Baltimore, 216 U.S. 285 (1910) 15
Huddleston v. United States, 42 U.S.L.W. 4467 (U.S., March 26, 1974) 16, 19

Kendall v. United States, 12 Pet. 524 (1838) 12
Kenosha v. Bruno, 412 U.S. 507 (1973) 13
Kentucky Whip & Collar Co. v. Illinois C.R.Co., 299 U.S. 334 (1937) 37

Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949) 12, 14

PAGE

Martin v. Hunter's Lessee, 1 Wheat. 304 (1816) 11, 34
Muskrat v. United States, 219 U.S. 346 (1911) 13

National Assoc. of Gov't Employees v. White, 418 F.2d 1126 (D.C. Cir., 1969) 12

O'Shea v. Littleton, 42 U.S.L.W. 4139 (U.S., January 15, 1974) 14

Palko v. Connecticut, 302 U.S. 319 (1937) 36
Palmore v. United States, 411 U.S. 389 (1973) 11
Philadelphia Co. v. Stimson, 223 U.S. 605 (1912) 14
Poresky, Ex parte, 290 U.S. 30 (1933) 15
Presser v. Illinois, 116 U.S. 252 (1886) 36, 37

Schlesinger v. Reservists Committee to Stop the War, 42 U.S.L.W. 5088 (U.S., June 25, 1974) 36
Steffel v. Thompson, 42 U.S.L.W. 4357 (U.S., March 19, 1974) 12

Talley v. California, 362 U.S. 60 (1960) 19, 36

United States v. Biswell, 406 U.S. 311 (1972) 8, 9, 10, 15, 16, 18, 28
United States v. Cruishank, 92 U.S. 542 (1876) 36, 37
United States v. Darby, 312 U.S. 100 (1941) 37
United States v. Miller, 307 U.S. 174 (1939) 16, 17, 18, 25, 26-27, 36, 38
United States v. Richardson, 42 U.S.L.W. 5076 (U.S., June 25, 1974) 36

Statutes:

Federal Firearms Act of 1938 (formerly 15 U.S.C., Ch. 18, §§901-909), repealed by Pub. L. 90-351, Title IV, §906, June 19, 1968, 82 Stat. 234 28

PAGE

Gun Control Act of 1968 (Public Law 90-618):
Title I (18 U.S.C., Ch. 44, §§921-928) ..... *passim*

Title II (26 U.S.C., Ch. 53, §§5801-5802, 5821-5822, 5841-5849, 5851-5854, 5861, 5871-5872; and 26 U.S.C. §§6806, 7273) 37

Indiana Military Code (Indiana Militia, §§45-2001, 2002) 7

10 U.S.C. 311 (b) (2) 12

10 U.S.C. 4312 17

28 U.S.C. 1254 (1) 2

28 U.S.C. 1331 ..... 7, 9

28 U.S.C. 1361 ..... 7, 9, 12

28 U.S.C. 2201 9

32 U.S.C. 105 (a) 29

32 U.S.C. 708 (d) 29

Regulations:

Dept. of Treasury Regulations, 26 C.F.R. Part 178 ("Commerce in Firearms and Ammunition") ... *passim*

32 C.F.R. 543.5 17

32 C.F.R. 543.8 (a) 17

Constitution of the United States:

Article II, Section 2 ..... 20, 21, 29

Article III, Section 2 ..... 6–7, 9, 11, 13

First Amendment 10

Second Amendment ..... *passim*

Ninth Amendment 3, 5, 9, 14, 15, 16, 36, 38

PAGE

Constitution of the State of Indiana:

Article 12, Section 1 7

Other Authorities:

1 Annals of Cong. 778 ..... 21, 22

Borzykowski, Tuvia: Between Tumbling Walls (Translated from the Yiddish by Mendel Kohansky; Hakibbutz Hameuchad Publishing House, Israel, 1972) 31, 32

Brief for the United States in United States v. Miller, No. 696, October Term, 1938 26–27

Cooley, Thomas M.: The General Principles of Constitutional Law (2d ed., 1891) 25

Congressional Record (daily ed.)—Senate:
Vol. 118, No. 125 (August 7, 1972) 24, 24n
Vol. 120, No. 133 (March 13, 1974) 24

Declaration of the Causes and Necessity of Taking Up Arms, July 6, 1775 23

Douglas, Justice William O.: The Bill of Rights, 38 N.Y.Univ. Law Rev. 207 (1963) 35

Federal Data Banks And Constitutional Rights, Committee Print, Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 93d Cong., 2d Sess. (U.S. Gov't Printing Office, 1974) 8, 27

Federalist Papers (Mentor Book ed., 1961, Library of Cong Catalog Card No. 61-10757) 19, 20, 21, 26

Feller and Gotting: The Second Amendment, A Second Look, 61 N.W.Univ. Law Rev. 46 (1966) 24

PAGE

Gerry, Elbridge: A Proclamation, For a Day of Thanksgiving, Praise and Prayer (October 24, 1810) 23n

History of the Supreme Court of the United States, by Julius Goebel, Jr., Vol. 1 ("Antecedents and Beginnings to 1801") (Macmillan, 1971) 27
House Report No. 1577 (Committee on the Judiciary; 90th Cong., 2d Sess.) 19, 37
Humphrey, Hubert H.: Letter to Guns Magazine, Vol. 6, No. 2 (February, 1960) 26

Jewish Resistance During the Holocaust, Proceedings of the Conference on Manifestations of Jewish Resistance, April 7-11, 1968 (Yad Vashem ed., Jerusalem, 1971) 31n
Journal of the First Session of the Senate, September 9, 1789 (Gales & Seaton ed., 1820) 27

Lewis, Anthony: On Accountability, N.Y. Times, March 4, 1974 28–29
Lloyd, Thomas: II Debates of Congress, 219-220 (1st ed., 1789; 2d ed., 1790) 22, 25

Marmer, George: Army Seizes United States In 'Esquire' Plot, Army Times, April 10, 1974 29
Memorandum of the Department of Justice, submitted in Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., Anti-Crime Program, pp. 242-249 (1967) 27

Senate Legislative Journal, Vol. 1 (Johns Hopkins Univ. Press, 1972) 27
Sources of Our Liberties (Perry ed., 1959) 23

PAGE

Sources and Documents illustrating the American Revolution 1764-1788 and the formation of the Federal Constitution (S. E. Morrison, editor; Oxford at the Clarendon Press, 1923) 23

Sovereign Immunity in Suits to Enjoin the Enforcement of Unconstitutional Legislation, 50 Harv. Law Rev. 956 (1937) 14

Story, Joseph: II Commentaries on the Constitution §1897 (5th ed., 1891) 24–25

They Fought Back, The Story of the Jewish Resistance in Nazi Europe (edited by Yuri Suhl; Crown Publishing Co., New York, 1967; Library of Cong. Catalog Card No. 66-26175) 31

3 U.S. Code Cong. & Adm. News 4410 (1968) 19, 37

WPIX-TV Station Editorial #658 (January 3, 1974) 34

IN THE

Supreme Court of the United States

October Term, 197.....

No. .....

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Lewis Gene Freeman, abovenamed, hereby petitions that a writ of certiorari issue from this Court to review the "Unpublished Order" of the United States Court of Appeals for the Seventh Circuit entered on May 3, 1974 in this case.

Opinions Below

The opinion of the District Court below (Southern District of Indiana) appears in the accompanying Appendix (41a).* The opinion of the Court of Appeals below (Seventh Circuit) is contained in its "Unpublished Order" and is printed in the accompanying Appendix (42a). None of the opinions below is reported.

Jurisdiction

The "Unpublished Order" containing the opinion of the Court of Appeals for the Seventh Circuit was entered on May 3, 1974 (42a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Is it a constitutionally insubstantial question whether the firearms dealer record-keeping and inspection provisions of Title I of the Gun Control Act of 1968, and the Department of Treasury Regulations thereunder, are violative of the constitutional rights of the people to keep arms and to privacy?

2. Is it a constitutionally insubstantial question whether the provisions of Title I of the Gun Control Act of 1968, purporting to prohibit the interstate shipment or sale of arms to persons who are not federally licensed dealers, are violative of the constitutional right of the people to keep arms?

---

* The separate appendix accompanying this petition for certiorari.

Constitutional and Statutory Provisions Involved

U.S. Constitution, Amendment 2:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to *keep* and bear Arms, shall not be infringed. (Emphasis added.)

U.S. Constitution, Amendment 9:

> The Enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Gun Control Act of 1968, Title I thereof, is set forth in the separate Appendix hereto (46a). The relevant portions of the Department of Treasury Regulations (26 C.F.R. Part 178) pursuant to the Gun Control Act are also set forth in the Appendix (61a).

Statement of the Case

Nature of the Case

This is a civil action in which the petitioner, Lewis Gene Freeman, a private citizen and a member of the Sedentary Militia of the State of Indiana, seeks a judgment declaring the unconstitutionality of the record-keeping and inspection provisions[1] of the Gun Control Act of 1968; and in which the petitioner, Mr. Freeman, also seeks a declaration of the unconstitutionality of those further provisions[2] of the

1. 18 U.S.C. 923 (g), of Title I of the Gun Control Act of 1968 which is Chapter 44 of Title 18 of the United States Code reproduced in the Appendix (46a).

2. 18 U.S.C. 922(a)(2), 922(a)(3), 922(b)(3), 922(c).

1968 Gun Control Act which purport to prohibit all interstate shipments and sales of arms from a federally licensed dealer to a non-licensee. In addition, the petitioner Mr. Freeman seeks both declaratory relief and relief in the nature of mandamus to compel the Secretary of the Treasury to cancel his promulgated regulations[3] under the foregoing provisions of the Gun Control Act of 1968, particularly those regulations[4] purporting to require the detailed record-keeping by federally licensed dealers of the identity of all purchasers of arms in both interstate and intrastate transactions for the purpose of being available for inspection by the Secretary of the Treasury and his agents, and those regulations[5] purporting to prohibit the interstate acquisition of arms by a non-licensee.

Ancillary to the foregoing provisions of the challenged statute is the further provision[6] of the 1968 Gun Control Act requiring all persons engaged in the business of dealing in firearms to be licensed by the Secretary of the Treasury.

Most importantly, the firearms covered by all of the challenged provisions of Title I of the Gun Control Act of 1968, and the regulations pursuant thereto, include such arms as rifles, shotguns, and repeating pistols, as more fully set forth in the Definitions[7] of the said Title I of the Gun Control Act and in the regulations pursuant thereto,

3. 26 CFR Part 178, reproduced in the Appendix (61a) in relevant part.

4. 26 CFR 178.23, 178.100, 178.121-178.126.

5. 26 CFR 178.29, 178.94, 178.96, 178.99.

6. 18 USC 922 (a) (1), 923(a), implemented by 26 CFR 178.41.

7. 18 USC 921 (a) (3).

26 CFR 178.11 ("Firearm"). It is the petitioner's basic contention that the foregoing challenged provisions of the Statute and Regulations, particularly by reason of the inclusions of arms suitable for militia purposes, infringe the petitioner's rights, as a private citizen and as a member of the Indiana Sedentary Militia, to keep arms and of privacy in so doing, pursuant to the Second Amendment[8] of the United States Constitution, both standing alone and in combination with the further provisions of the Bill of Rights, to wit, the First Amendment (right of association), the Third Amendment (against quartering of soldiers), the Fourth Amendment (against unreasonable searches and seizures), the Fifth Amendment (against self-incrimination), the Ninth Amendment (against disparagement of rights retained by the people), and the Tenth Amendment (reservation of powers to the States and to the people), in accordance with the combination of rights doctrine of *Griswold* v. *Connecticut,* 381 U.S. 479, 484 (1965).

Course of Proceedings in the District Court

Petitioner, Mr. Freeman, having been unsuccessful in obtaining arms from three federally licensed dealers in interstate commerce on the stated refusal of these dealers to sell arms to him as a non-licensee,[9] filed a civil complaint in the District Court of Southern Indiana seeking a judgment declaring that the Gun Control Act of 1968 is unconstitutional, in that it infringes the petitioner's right to keep arms under the Second Amendment to the U.S. Constitution and in that (*inter alia*) it violates the petitioner's right of privacy in keeping arms peacefully (Appendix: 2a,

8. For text, see p. 3, *supra.*

9. Appendix to this Petition (7a, 8a, 9a).

3a). In response to this complaint, the government (respondents in this Court) made a motion to dismiss for lack of jurisdiction, by reason of sovereign immunity and lack of a case or controversy, as well as for failure to state a claim upon which relief can be granted (10a). In opposition to this motion to dismiss the complaint, the petitioner then made a motion to add the Secretary of the Treasury as a party defendant and to drop certain other parties originally named as defendants, as well as for leave to amend the complaint in order to set forth more succinctly the Federal claims for relief, but basically setting forth the same claims as originally alleged (17a, 18a through 26a).

Dispositions in the Courts Below

The District Court below, by Honorable Cale J. Holder, District Judge, denied the petitioner's motion to add and drop parties and for leave to amend the complaint, and granted the government's motion to dismiss (41a). In so ruling, the District Court added: "The Court adopts the brief of the defendants in support of this ruling" (*Ibid.*). Accordingly, the government's briefs in the District Court below are included in the Appendix (11a; 30a).

On appeal, the Court of Appeals affirmed the rulings of the District Court on the sole ground that the claims of the petitioner were all "frivolous" (44a), and for this reason alone the District Court lacked "subject matter jurisdiction" (45a). Accordingly, the Court of Appeals explicitly did not reach "the government's arguments concerning the case or controversy requirements of Article III

of the Federal Constitution and sovereign immunity" (45a). And the Court of Appeals explicitly did not express any view on its *sua sponte* issue of "whether jurisdiction was proper under 28 U.S.C. §§1331 & 1361" (45a).

Statement of Facts

The petitioner, Lewis Gene Freeman, is an able-bodied male citizen of the State of Indiana between the ages of 18 and 45 years, and as such is a member of the militia of the State of Indiana pursuant to the State Constitution thereof, Article 12, section 1. More particularly, petitioner is, by virtue of his age and citizenship of the State of Indiana, a member of the sedentary militia of that State pursuant to Article III of the Indiana Military Code (Indiana Militia, sections 45-2001 and 2002). The Court of Appeals so held (43a). The petitioner is also now a licensed dealer in firearms other than destructive devices, pursuant to 18 U.S.C. 923(a)(1)(B).

Prior to the commencement of this lawsuit, the petitioner, Mr. Freeman, wrote away to three out-of-state federally licensed firearms dealers, seeking to purchase a rifle, a shotgun, and a repeating pistol, respectively (7a through 9a; 24a through 26a). These purchase requests were all rejected by the dealers on the stated grounds that the petitioner would not be able to obtain any such arms from them unless he furnished them with a copy of a federal firearms dealer license in the name of petitioner himself, in order to comply with the requirements of the Gun Control Act of 1968 (*ibid.*).

It is undisputed that in order for petitioner to legally obtain any arms whatsoever, either in interstate or intra-

state commerce, from a dealer, it is necessary for such dealer to be federally licensed and for such dealer to record the identity of plaintiff and the identity of the arms acquired (38a; 90a through 91a). All of such records would then be available for inspection and copying by the Secretary of the Treasury and his agents (38a, 39a) under the terms of the Gun Control Act itself, 18 USC 923 (g). It is likewise undisputed, that petitioner simply cannot legally obtain any arms from out-of-state persons except from federally licensed firearms dealers to whom petitioner must supply a copy of his own federal firearms dealer license in compliance with the 1968 Gun Control Act. 26 CFR 178.94.

It is also undisputed that the petitioner cannot legally acquire arms as a dealer without their being subject, as all dealers' arms are subject, to "unannounced, even frequent, inspections" without a search warrant or probable cause. *United States* v. *Biswell*, 406 U.S. 311, 316 (1972). Moreover, a firearms dealer as such may not acquire arms from another dealer without having both the selling dealer and himself keep records of such transfers of arms pursuant to the challenged requirements of the Gun Control Act. These records are all subject to inspection by the Secretary of Treasury's agents for copying and transmittal to the central government's computer data storage and retrieval systems. See: 18 U.S.C. §§923 (g) and 922 (m). See also: *Federal Data Banks and Constitutional Rights*, Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Committee Print, 93d Cong. 2d Sess. (U.S. Government Printing Office, 1974), p. 45 (showing that the Department of Treasury maintains 46 data banks of which 12 are without statutory authority).

As shown in petitioner's affidavit in this Court (88a), federally licensed firearms dealers in the petitioner's home State of Indiana are also unwilling to sell arms to the petitioner as a non-dealer unless he fills out Dept. of Treasury Form 4473 (90a) which would thereafter be available for inspection and copying by the Secretary of Treasury's agents. 18 U.S.C. 923 (g), *supra;* 26 C.F.R. 121 (b); *United States* v. *Biswell, supra,* 406 U.S. at 316.

By reason of this web of Federal Gun Control regulation which prohibits the anonymous acquisition of arms from any dealer, the petitioner, Mr. Freeman, seeks a declaratory judgment declaring the record-keeping and inspection provisions of the Gun Control Act of 1968 unconstitutional, as well as the provisions of the same Act which prohibit the interstate sales of arms to anyone except federally licensed dealers as purchasers. In addition, petitioner seeks to have declared unconstitutional the Secretary of Treasury's regulations under the challenged provisions of the Gun Control Act, and to have relief in the nature of Mandamus (28 U.S.C. 1361) to compel the Secretary of Treasury to cancel those regulations which were promulgated pursuant to the challenged provisions of the Gun Control Act.

Basis for Federal Jurisdiction in the Court of First Instance

The basis for federal jurisdiction in the District Court is the existence of a case and controversy, in the sense of the Article III of the Constitution of the United States, arising under the Second and Ninth Amendments to the Constitution, and on the existence of a complaint pursuant to 28 U.S.C. §§1331, 1361, and 2201.

Reasons Why the Writ Should Be Granted

I. Introduction

The petitioner, Mr. Freeman, has concretely felt the brunt of the Gun Control Act of 1968 by reason of his frustrated attempts to obtain militia arms from federally licensed out-of-state dealers, or from federally licensed in-state dealers without, respectively, furnishing the dealers with a copy of his own federal firearms license (7a, 8a, 9a) or filling out and signing Department of Treasury Form 4473 (89a, 90a). Mr. Freeman presents this Court with the same type of case and controversy arising under the Second Amendment as would be presented under the First Amendment if Congress had enacted the same type of restrictions and regulations on the sale of newspapers and magazines as enacted on the sale of firearms. Thus, Mr. Freeman presents the same type of case which a newsreader would present to this Court had Congress enacted the requirements that all *inter*state sales of newspapers and magazines be restricted exclusively between a federally licensed dealer-seller and a federally licensed dealer-purchaser who furnished the dealer-seller with a copy of the purchaser's dealer-license, and that all *intra*state sales of newspapers and magazines be signed for by the purchaser on a form-record, all for the purpose of "unannounced, even frequent, inspections" [*United States* v. *Biswell*, 406 U.S. 311, 316 (1972)] of these records without search warrants or probable cause by federal agents.

The basic impediment to the acquisition of arms by Mr. Freeman is the Statute, the Gun Control Act of 1968 (46a), together with the actively enforced Regulations thereunder

of the Department of Treasury (61a). The refusal of the licensed firearms dealers to deal with Mr. Freeman on his own Second Amendment terms, which gives rise to this controversy, stems from the Statute and Regulations, there having been no "tortious invasions" [*Hague* v. *CIO*, 307 U.S. 496, 507 (1939)] (trespass or *assumpsit*) of petitioner's constitutional rights on the part of the firearms dealers themselves. Therefore, this controversy, arising under the Constitution by virtue of the infringement of Mr. Freeman's Second Amendment rights, may not be "properly raised in a state court" [*Hague* v. *CIO*, *supra*, 307 U.S. at 507], as in the more usual Article III case and controversy situation. Indeed, the present case appears to be one of those "cases enumerated in the constitution, [in which] the state courts did not then possess jurisdiction." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 331 (1816). Contrast: *Palmore* v. *United States*, 411 U.S. 389, 401 (1973). Accordingly, Mr. Freeman sought relief in the Federal Courts, the case having ripened as far as it possibly could ripen (unless Mr. Freeman could find a firearms dealer willing to conspire with him to violate the Gun Control Act and arrange to have himself and the dealer arrested and prosecuted).

In his original complaint for declaratory judgment, Mr. Freeman named the United States as a defendant. Thereby, a declaratory judgment would fully protect Mr. Freeman as against *all* Federal agents, by reason of collateral estoppel, from prosecutions under the criminal or civil penalties of the Statute. In addition, such a declaratory judgment would protect all parties in privy with him, namely, the firearms dealers who would then be willing to sell him arms unburdened by the restrictions of the Gun

Control Act. Cf. *Steffel* v. *Thompson*, 42 U.S.L.W. 4357, at 4366-67 (concurring opinion of Mr. Justice Renquist) (U.S., March 19, 1974). Such a declaratory judgment would thus remove the sole impediment to his constitutionally protected acquisition of arms, and at the same time would "not require action by the sovereign or disturb the sovereign's property." *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 687 (1949). The declaratory judgment sought by Mr. Freeman would simply constitute passive notice by the Federal Judiciary that it will not enforce those provisions of the Gun Control Act which interfered with Mr. Freeman's Second Amendment rights. Armed with this declaratory judgment, Mr. Freeman could then easily find a willing firearms dealer and acquire arms under the Second Amendment anonymously, both as to identity of arms and as to identity of purchaser. In this way "the necessary relief" [*Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 392 (1971)] will have been fashioned to secure Mr. Freeman's "federally protected rights [which] have been invaded." *Bivens, supra*, 403 U.S. at 392. In all events, mandamus jurisdiction was proper under 28 U.S.C. 1361; compare *Kendall* v. *United States*, 12 Pet. 524, 622-23, with *National Assoc. of Gov't Employees* v. *White*, 418 F. 2d 1126, 1129 (D.C. Cir., 1969).

By its silence on the issue of standing to sue, raised by the government (11a, 34a), the Court of Appeals apparently agreed that Mr. Freeman had standing by reason of his being a member of the Indiana "Sedentary Militia" (43a), in agreement with his Proposed Amended Complaint ¶3 (19a). Cf. 10 U.S.C. 311 (b) (2): "the unorganized militia . . .".

In its brief in the District Court, the government suggested that if Mr. Freeman has a "right to purchase firearms interstate, then he must redress the wrongful violation of that right by suit against those who deprived him of it, the firearms dealers who refused to sell firearms to him in interstate commerce" (33a). However, a friendlier type of lawsuit is hard to imagine, and a judgment against these firearms dealers (probably by default) most certainly "will not conclude private [*and public*] parties." *Muskrat* v. *United States*, 219 U.S. 346, 362 (1911). Thus this case is entirely unlike the situation in *Coffman* v. *Breeze Corporations*, 323 U.S. 316 (1945) where a default judgment in that case would have given the plaintiff all that he was ultimately seeking, namely, a money judgment against the *private* defendants. In any event, however, the government's position clearly indicates that if Mr. Freeman has a right under the Second Amendment then indeed he has a case and controversy under Article III of the Constitution, and then the only difference between the government's position and Mr. Freeman's position is as to who is a proper party defendant.

In its motion to dismiss Mr. Freeman's original complaint, the government raised the issue of improper parties defendants (11a). In an abundance of caution, Mr. Freeman then moved for leave to amend the complaint in order to add the Secretary of Treasury as a party defendant, and thereby to "cure the jurisdictional defect" [*Kenosha* v. *Bruno*, 412 U.S. 507, 514 (1973)] which might possibly exist in the complaint as originally filed. Thereupon, the government defendants appeared by counsel for the Department

of Treasury (27a, 40a).[10] Counsel for the Treasury persisted in asserting the defense of lack of jurisdiction by reason of sovereign immunity even with respect to the Secretary of Treasury as a party (32a), in the teeth of the definitive and plain language of this Court:

> "The rule was stated by Mr. Justice Hughes in *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 620 (1912), where he said: '. . . in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. [Citing cases.] And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred.' "
>
> *Larson* v. *Domestic & Foreign Commerce Corp.*, *supra*, 337 U.S. 682, 690-91.

See also: Note, *Sovereign Immunity in Suits to Enjoin the Enforcement of Unconstitutional Legislation*, 50 Harv. L. Rev. 956, 957-958 (1937).

In all events, the foregoing considerations "obviously shade into those determining whether the complaint states a sound basis for . . . [declaratory and mandamus type] relief." *O'Shea* v. *Littleton*, 42 U.S.L.W. 4139, 4142 (U.S., January 15, 1974). On the merits of this issue, the Court of Appeals held that, with respect to both the Second Amendment and Ninth Amendment claims of Mr. Freeman, the District Court had properly dismissed the complaint for lack of subject matter jurisdiction solely on the ground that each of these claims was "frivolous" and "so attenu-

10. In the Court of Appeals, the government's brief was signed by Matthew J. Werneth, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Dept. of Treasury.

ated and unsubstantial as to be absolutely devoid of merit" 44a, fn. 7). In support of its decision, the Court of Appeals cited this Court's decision in *Hagans* v. *Lavine*, 42 U.S.L.W. 4381, 4384 (U.S., March 25, 1974); but, in so doing, the Court of Appeals neglected to consider this Court's own qualification of that doctrine of "constitutional insubstantiality," namely:

> "A claim is insubstantial *only if* '"its unsoundness so clearly results from *previous decisions of this court* as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy."' *Ex parte Poresky*, [290 U.S. 30] *supra*, at 32, quoting from *Hannis Distilling Co.* v. *Baltimore*, [216 U.S. 285] *supra*, at 288; . . ."
>
> *Hagans* v. *Lavine*, *supra*, 42 U.S.L.W. at 4384 (emphasis added).

However, there has never been a decided case in this Court in which the Gun Control Act's prohibitions and record-keeping requirements have ever been challenged under either the Second or the Ninth Amendments. But neither the *reasoning* of the Court of Appeals decision below, nor of the decisions cited by the Court of Appeals, provides this Court with any guidance on the merits of Mr. Freeman's fundamental federal claims.

II. The Court of Appeals Has Decided an Important Question of Federal Law in Conflict With Applicable Decisions of This Court.

In support of its theory of the constitutional insubstantiality of Mr. Freeman's claims, the Court of Appeals below cited (44a, 45a) but two cases previously decided by this Court: *United States* v. *Biswell*, 406 U.S. 311

(1972) and *United States* v. *Miller*, 307 U.S. 174 (1939). While it is true that the *Biswell* case, *supra*, 406 U.S. 311, recognized the utility of the record-keeping and inspection provisions of the Gun Control Act of 1968 as an enforcement tool for some of the alleged purposes of the Act [see also: *Huddleston* v. *United States*, 42 U.S.L.W. 4467 (U.S., March 26, 1974)]; nevertheless, *Biswell*, *supra*, does not even mention the Second or Ninth Amendments [likewise: *Huddleston*, *supra*, 42 U.S.L.W. 4467]. Furthermore, the briefs in *Biswell* did not even attempt to raise any issues under either of these Amendments to the Constitution. Therefore, *Biswell*, *supra*, 406 U.S. 311, is absolutely no authority for the *constitutional* insubstantiality of Mr. Freeman's Second and Ninth Amendment claims in the case at bar.

Turning to the other case cited by the Court of Appeals below, *United States* v. *Miller*, *supra*, 307 U.S. 174, that case merely held that it was not within judicial notice (before trial) that a " 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia." *Miller*, *supra*, 307 U.S. at 178. But the arms which Mr. Freeman has been thwarted from acquiring by reason of the Gun Control Act of 1968 indeed do have a role in being a "part of the ordinary military equipment or that its use could contribute to the common defense." *Miller*, *supra*, 307 U.S. at 178. While the government has disputed this militia role of the arms Mr. Freeman seeks to obtain (37a), nevertheless such an issue is for trial on the merits if not judicially noticeable in favor of Mr. Freeman's position. See: *Fife* v. *State*, 31 Ark. 455, 460-61 (1876), holding that the term "arms" in the Second Amendment included "the rifle, of all descriptions, the

shotgun, the musket and repeater" [pistols and revolvers excluding "the pocket revolver"] (cited approvingly in *United States* v. *Miller, supra,* 307 U.S. at 182 n. 3). See also: 10 U.S.C. 4312 ("National rifle and pistol matches: small-arms firing school"), implemented by Dept. of Army Regulations in 32 C.F.R. 543.5 ("Rifle and pistol competitions . . .") and in 32 C.F.R. 543.8 (a) (2) (iv) (*d*) entitled: "Pistol and revolver matches". In any event, the sweep of the Gun Control Act of 1968 clearly includes all militia arms. Moreover, the Court of Appeals did not take judicial notice either way at this stage of the lawsuit (motion to dismiss prior to defendants' answer) on the issue as to the type of arms which Mr. Freeman attempted to acquire. See also: Mr. Freeman's affidavit in this Court (88a), as to the M-1 carbine he has attempted to acquire subsequent to the commencement of this lawsuit.

More importantly, the *dicta* of the *Miller* case indicated that in the case of any militia arm, "the Second Amendment guarantees the right to keep and bear such an instrument." *United States* v. *Miller, supra,* 307 U.S. at 178. Indeed, this Court in *Miller, supra,* noted:

> "The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised *all males physically capable of acting* in concert for the common defense. 'A body of citizens enrolled for military discipline.' And further, that ordinarily when called for service these men were expected to appear *bearing arms supplied by themselves* and of the kind in common use at the time."
>
> *United States* v. *Miller, supra,* 307 U.S. at 179 (emphasis added).

Inherently, of course, a private citizen must have first obtained and kept arms earlier in order to have them readily available for subsequent bearing in the Militia. That is why the Second Amendment itself speaks of "the right of the people to *keep* and bear Arms." (Emphasis added.)

It may be important to remember that *Miller, supra*, 307 U.S. 174, was decided by this Court on the basis of "No appearance for appellees." [307 U.S. at 175.] Hence, this decision in *Miller, supra*, must be strictly limited to its peculiar facts insofar as it holds against the position of the petitioner in the case at bar, if at all.

In any event, no case has ever been decided in this Court on the issue of the constitutionality of the challenged provisions of the Gun Control Act of 1968 (or of any similar Statute) under the Second or Ninth Amendments to the Constitution. Therefore, the Court of Appeals below clearly erred in holding that Mr. Freeman's claims were constitutionally insubstantial, simply because there are no "previous decisions of this court as to foreclose the subject" [*Hagans* v. *Lavine, supra*, 42 U.S.L.W. at 4384], and there are clear indications that Mr. Freeman's claims are sound on their own merits. While any case raising the constitutionality of a Federal Statute, under a specific provision of the Bill of Rights, is important; this case is ever the more important in view of the fact that indeed: "Large interests are at stake. . . ." *United States* v. *Biswell, supra*, 406 U.S. at 315.

III. Fundamental and Widespread Public Importance of the Issues in This Case.

A. Historical Background

The true purpose of the record-keeping and inspection provisions of the Gun Control Act of 1968 is revealed in House Report No. 1577 (Committee on Judiciary, 90 Cong. 2d Sess.) to accompany the bill H.R. 17735 (1968) [cited in *Huddleston* v. *United States, supra,* 42 U.S.L.W. at 4470]:

> "The principal purpose of H.R. 17735, as amended, is to strengthen Federal controls over interstate and foreign commerce in firearms and to assist the States effectively to regulate firearms traffic within their borders. . . .
>
> "Finally, with the information available from consistent reporting of sales of ammunition, it will be possible to *develop valid analysis* of the use and *distribution of firearms and ammunition in the country.*"
>
> H.R. Rep. No. 1577, *supra* (90 Cong. 2d Sess.), at 6, 8; also quoted in 3 U.S. Code Cong. & Adm. News 4410, 4411, 4414 (1968) (emphasis added).

These stated purposes fundamentally undermine the whole underpinnings of the Constitution and the very reasons why the Second Amendment was adopted in the first place.

As is well known, in the years 1787-88, the famous Federalist Papers were published in New York to induce the adoption of the Constitution. *Talley* v. *California*, 362 U.S. 60, 65 (1960). One of the great fears of the people at that time which stood in the way of ratification of the Constitution was the fear of a standing army which could be used to aid the establishment of a dictatorship. *The Federalist Papers* No. 24 (Hamilton), at p. 157 (A Mentor

Book ed., 1961, Library of Cong. Cat. Card No. 61-10757). Accordingly, Alexander Hamilton, in *Federalist* No. 29, reassured the people that they could always have an "organized" (in modern terms) militia comprising a well-trained "select corps of moderate size" (*id.* at p. 185) as well as an "*un*organized" (modern term) militia comprising "the people at large . . . properly armed and equipped." (*Ibid.*) Thereby, in case of a usurpation of power in either a State or the Federal government, the individual citizens would be able to rectify the situation and restore the Constitution:

> "Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress."
>
> *The Federalist Papers* No. 28, *supra,* at p. 181.

More specifically, if the President, who is Commander in Chief of the Army and Navy of the United States (U.S. Const. Art. II, Section 2) would dare attempt to usurp power and establish a dictatorship, the armed citizenry could effectively vote with their armed bodies in the state militias under the aegis of the State legislatures. For the State legislatures can be depended upon to "always be not only vigilant but suspicious . . . and will be ready enough, if anything improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent." *The Federalist Papers* No. 26, *supra,* at p. 172 (emphasis in original).

James Madison confirmed the right of the people to keep arms:

> "Besides the advantage of being armed, which the Americans possess over the people of almost every nation, the existence of subordinate governments, to which the people are attached and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with this aid alone they would not be able to shake off their yokes."
>
> *The Federalist Papers* No. 46, *supra*, at p. 299.

However, the people were not satisfied with the Constitution as it stood in 1789, primarily because the President was also the Commander in Chief of the Militia of the several States (U.S. Const. Art. II, Section 2). Thus, the President could effectuate all too easily a scheme of usurpation unless some countervailing power resided in the people. Elbridge Gerry made this clear when he objected to an early proposal for what was to become the Second Amendment which contained the added phrase "but no person religiously scrupulous shall be compelled to bear arms" [1 Annals of Cong. 778]:

> "Mr. Gerry: This declaration of rights, I take it, is intended to secure the people against the maladministration of the Government; if we could suppose that, in all cases, the rights of the people would be attended to, the occasion for guards of this kind would be removed. *Now, I am apprehensive, sir, that this clause would give an opportunity to the people in power to destroy the constitution itself. They can declare who are those religiously scrupulous, and prevent them from bearing arms.*

"What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty. Now, it must be evident, that, under this provision, together with their other powers, Congress could take such measures, with respect to a militia, as to make a standing army necessary. Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins. This was actually done by Great Britain at the commencement of the late revolution. They used every means in their power to prevent the establishment of an effective militia to the eastward. *The Assembly of Massachusetts, seeing the rapid progress that administration were making to divest them of their inherent privileges, endeavored to counteract them by the organization of the militia; but they were always defeated by the influence of the Crown.*

"Mr. Seney wished to know what question there was before the committee, in order to ascertain the point upon which the gentleman was speaking.

"Mr. Gerry replied that he meant to make a motion, as he disapproved of the words as they stood. He then proceeded. No attempts that they made were successful, until they engaged in the struggle which emancipated them at once from their thraldom. Now, if we give a discretionary power to exclude those from militia duty who have religious scruples, we may as well make no provision on this head. For this reason, he wished the words to be altered so as to be confined to persons belonging to a religious sect scrupulous of bearing arms."

II *Debates of Congress* 219-220, by Thomas Lloyd (1st ed. 1789, 2d ed. 1790); 1 Annals of Cong. 778-779. (Emphasis added.)

From this it is seen that Mr. Gerry, who himself hailed from Massachusetts, was thus still worried about the problem of Arms confiscation by the British Crown:

"The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismission, entered into a treaty with him, it was stipulated that the said *inhabitants* having deposited *their* arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up *their* arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the *arms* deposited as aforesaid, that they might be preserved for their *owners*, to be *seized* by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind."

> *Declaration of the Causes and Necessity of Taking Up Arms*, July 6, 1775, quoted in *Sources of Our Liberties*, p. 298 (Perry Edition, 1959) and in *Sources and Documents illustrating the American Revolution 1764-1788 and the formation of the Federal Constitution*, S. E. Morrison, editor (Oxford at the Claredon Press, 1923) (Emphasis added) at 141, 143.

Thus, Elbridge Gerry[11] was concerned for the keeping of Arms in the *un*organized militia, having learned all too well

11. Gerry, who served as Vice-President in 1813-14, seems to have retained his view of the utility of the militia until his dying day in 1814:

> ". . . For the patriotic and martial spirit which animates the Militia, that great and sole palladium of Liberty, to be prepared at this dangerous crisis, and on all occasions, for national defense.
>
> * * *
>
> ". . . That man, born to be friend, may no longer be the destroyer of his species—And that War, the great scourge of humanity, and its prevailing cause, Tyranny, may cease throughout the Globe."
>
> Elbridge Gerry, Esq. (Governor of the Commonwealth of Massachusetts): *A Proclamation, For a Day of Public Thanksgiving, Praise, and Prayer* (October 24, 1810).

how easily centralized Arms stores could be confiscated, that is, how vulnerable the organized militia stores were to confiscation. See: Feller and Gotting, "The Second Amendment, A Second Look" 61 N.W.U.L.Rev. 46, 52 n.30 (1966); cited approvingly in a staff memorandum of Senator Hart[12] in *support* of the *constitutionality* of gun control legislation, Cong. Rec. (daily ed.)—Senate, Vol. 118, No. 125 (August 7, 1972) at S 12942, S 12943 col. 2 n.1.

Thus, the Second Amendment was adopted for the quiet keeping of Arms in the hands of individual citizens:

> "The right of the citizen to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a *strong moral check* against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them." II *Commentaries on the Constitution*

12. Senator Hart was the sponsor of S.2815 which he introduced as an Amendment No. 1335 to amend the proposed Handgun Control bill of 1972 introduced in the Senate by Senator Bayh as S.2507. Cong. Rec. (daily ed.)—Senate, Vol. 118, No. 125 (August 7, 1972) at S 12934.

Senator Hart's aforementioned Amendment No. 1335 would "prohibit the possession of handguns by anyone except the military, the police, and approved security guards," with limited exceptions to be made for federally licensed target pistol clubs. Cong. Rec. (daily ed.). *supra,* at S 12933 col. 3. More recently, Senator Hart has stated somewhat ruefully:

> "Long guns are something else. It will be a long day I suppose, before we get to the business of outlawing long guns, and I am not sure that today we are about to require the registration and licensing of handguns, . . ." Cong. Rec. (daily ed.), Vol. 120, No. 33 (March 13, 1974) at S 3704 col. 3.

Thus the fear of many firearms owners of ultimate confiscation is more real than imagined.

646, §1897, by Joseph Story (5th ed., 1891), citing 2 Lloyd's Debates 219, 220 [quoted previously hereinabove at p. 22] (Emphasis added; approved in *United States* v. *Miller, supra,* 307 U.S. at 182 n.3).

And Judge Thomas Cooley, who is also listed as an approved authority in *United States* v. *Miller, supra,* 307 U.S. at 182 n.3, stated:

> "The right declared [to keep and bear Arms] was meant to be a *strong moral check* against the usurpation and arbitrary power of rulers, and as a necessary and efficient means of regaining rights when temporarily overturned by usurpation.
>
> "*The Right is General*—It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent.... But the law may make provision for the enrolment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. *The meaning of the provision undoubtedly is, that the people from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose....*" Thomas M. Cooley, *The General Principles of Constitutional Law* 281-282 (1891, 2d ed.). (Emphasis added.)

This right to keep Arms, *un*regulated by government, is not to say that the people have a right of revolution, or a right of secession from the irrevocable compact formed

by the constituent act of adoption of the Constitution (see: *The Federalists Papers* No. 22, *supra*, at p. 152). Nor does the right to keep and bear Arms mean that the people are supposed to "rush tumultuously to arms." *The Federalist Papers* No. 28, *supra*, at p. 180. But what it does indeed mean is that the people are to be allowed to retain the ability to keep arms, in order always to be in a position to act in the appropriate militia to restore the Constitution, if, as and when the occasion should arise. Hopefully never. The mere keeping of Arms in the hands of the private citizen reduces the probability of such an occasion to an absolute minimum. This is undoubtedly one of the basic reasons why our Nation has survived for well nigh two hundred years without a dictatorship. But, as pointed out by Senator Hubert H. Humphrey:

> "*Certainly one of the chief guarantees of freedom under any government, no matter how popular, is the right of the citizen to keep and bear arms.* This is not to say that firearms should not be carefully used, and that definite safety rules of precaution should not be taught and enforced. *But the right of the citizen to bear arms is just one more guarantee against arbitrary government, one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible.*" Letter to *Guns Magazine*, Vol. 6, No. 2, p. 4 (February 1960), by H.H. Humphrey. (Emphasis added.)

Therefore, the keeping of Arms by the individual citizen has been authoritatively declared to be not merely a "political" right, but a "private individual right guaranteed to the citizen not the soldier." *Andrews* v. *State*, 3 Heisk. (50 Tenn.) 165, 182; 8 Am. Rep. 8. 16 (1871); a case which was cited *approvingly* in the *government's* brief in *United States*

v. *Miller, supra,* 307 U.S. 174, Docket No. 696, October Term 1938, at p. 19. Indeed, so basic did the Framers believe that the right to keep and bear Arms was, that the first session of the First Senate of the United States soundly *defeated* a proposal to insert the qualifying words "for the common defense" immediately after "the right of the people to keep and bear arms." *Journal of the First Session of the Senate*, September 9, 1789 (p. 77 in Gales & Seaton ed., 1820); *Senate Legislative Journal*, Vol. I, at p. 166 (Johns Hopkins Univ. Press, 1972). See also: *History of the Supreme Court of the United States*, Vol. I ("Antecedents and Beginnings to 1801") at 450 (Macmillan, 1971). (Thus, the government's *Memorandum*, supporting gun control, *Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 90th Cong., 1st Sess., Anti-Crime Program, at p. 248, is somewhat less than candid in stating flatly that: "The Senate debates in the First Congress are not reported.") For the private and anonymous keeping of Arms in the hands of the individual citizen is the best guarantee against confiscation of Arms, both in the days of the founding of this great Nation and in these modern days of the computer data bank storage and retrieval systems. See: *Federal Data Banks and Constitutional Rights*, prepared by the Staff of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate (U.S. Gov't Printing Office, 1974, Committee Print).

B. Fundamental Dangers of Arms Record-Keeping Today

The dealer-licensing provisions of the Gun Control Act of 1968 require every dealer in Arms to be federally licensed and to keep records. These records in the hands of these licensed dealers contain the identity of all purchasers and the identity of Arms purchased. See: Form 4473 (90a). All such records are then always available for "unannounced" [*United States* v. *Biswell, supra,* 406 U.S. at 316] inspection and copying by agents of the Secretary of the Treasury, respondent herein. Thus, the central government can always quickly acquire, if not periodically accumulate, complete information as to all Arms sold by dealers since the year 1968 (and earlier under the less vigorously enforced predecessor Statute, the Federal Firearms Act of 1938). Thus, the record-keeping and inspection provisions constitute a registration program of all purchases of Arms from dealers. As time passes, and the Arms in private hands, which got there before the Gun Control Act of 1968, grow old, obsolete and inoperative (with ammunition no longer available due to various caliber changes over the years), the Federal government will thus have available complete lists of the identity of all operable Arms and their purchasers in the government's centralized mass memory data storage and retrieval computer systems. These Arms are thus vulnerable to a sudden confiscation program by the Federal government.

Recent "WATERGATE" *et cetera* events show all too clearly how readily even the top leaders of such agencies as the F.B.I. and the C.I.A. can become politicized in the hands of a political President and his conspiring associates. Indeed, these events have caused such respected columnists as Anthony Lewis of the N.Y. Times to worry

aloud about "a President who went flagrantly beyond his constitutional powers, for example using the armed forces against the courts." Anthony Lewis, N.Y. Times, March 4, 1974, p. 29, col. 2. Others wonder about just whose orders the average Army officer would follow "if the armed forces of the U.S. staged a coup d'etat." George Marmer, Army Times, April 10, 1974, reviewing the recent book "Seven Days in May" (92a). While Anthony Lewis suggests the remedy of impeachment for a President who was guilty of using the armed forces against the courts, the problem arises that such a President would undoubtedly first (or soon thereafter) use the armed forces against the Congress, thereby forestalling any impeachment process. And in any event, who can *enforce* an impeachment verdict against a President who used the armed forces against the courts and usurped absolute power and dictatorship? Only the citizens who have Arms, acting through their State militias!

While many people believe that the *or*ganized Militia, the National Guard, is sufficient to guarantee the security of a free State, it should be remembered that the President is the Commander in Chief of the National Guard (U.S. Const. Art. II, Section 2) and he can have it "federalized." *Gilligan* v. *Morgan*, 413 U.S. 1, 7 (1973). Moreover, pursuant to his authority and duty under 32 U.S.C. 105 and 708 (d), the Secretary of the Army has a yearly inspection and inventory of all "the amount and condition of property held by the Army National Guard." 32 U.S.C. 105 (a)(1), as well as of the identity of "the members of the Army National Guard." 32 U.S.C. 105 (a)(3). And it is within recent memory when a President's own brother was the highest officer in the Dept. of Justice, and when a Presi-

dent's own appointees to high office in both Justice and Commerce have had the tinge of "WATERGATE."

Our Founding Fathers did not intend that the State National Guards, so subject as they are to central control, be the sole repository of the "security of a free State." U.S. Const. Amend. 2. Indeed, the aforementioned ability of the President to get at the records of the State National Guards weakens most severely, if not destroys, the effectiveness of the National Guard as a strong moral check against usurpation by a President bent on dictatorship. For the President thus has the data always at hand as to where all the National Guard arms are located, thereby facilitating their quick confiscation by his followers in the armed forces. This is just the situation that our Founding Fathers intended to prevent when they enacted the Second Amendment. For they were all too familiar with the British confiscation of the organized militia stores of the Colonists in Massachusetts (see: hereinabove at p. 24). as well as the consequent need for the keeping of arms in the hands of the people at large *anonymously* in order not to be required to deliver these arms up at the call of the Government (as had happened in Boston; see: hereinabove at p. 23).

It is therefore abundantly clear that the Founding Fathers recognized the dangers of the registration of Arms, and that they adopted the Second Amendment to forestall the confication of Arms in the hands of the people at large. The people were to "keep" (U.S. Const. Amend. 2) these Arms anonymously, and thus beyond the power of easy mass confiscation by Government bent on tyranny. The Gun Control Act of 1968 thus defies the legislative intent of our Founding Fathers.

C. The Tragic Second Amendment Lesson of the Ill-Fated Uprising of the Jews in the Warsaw Ghetto

When the Jews in the Warsaw Ghetto in 1942 realized that "the meek submission to the slaughter did not lessen the Holocaust, but increased it,"[13] they then decided upon a plan of armed resistance. However, at first they had no Arms, and the only Arms which the Poles outside the Ghetto would supply the Jewish Resistance Fighters were pistols and revolvers. *They Fought Back, The Story of the Jewish Resistance in Nazi Europe,* edited by Yuri Suhl (Crown Publishers, N.Y., 1967, Library of Cong. Catalog Card No. 66-26175) at p. 116. In January of 1943, the first armed resistance by the Jewish Fighting Organization in the Warsaw Ghetto was carried out with only "ten pistols." *Between Tumbling Walls,* by Tuvia Borzykowski (a surviving Jewish Resistance Fighter of the Warsaw Ghetto) at 29 (Translated from the Yiddish by Mendel Kohansky; Hakibbutz Hameuchad Publishing House, Israel, 1972). For three months thereafter, the Nazi German soldiers did not dare even venture into the Ghetto. During that three-month period, the Nazis under Heinrich Himmler decided that they would have to burn burn down the Ghetto, house-by-house. *They Fought Back, supra,* at 92. And the Nazis then proceeded to do so, although not without considerable difficulty in the face of the armed Jewish Resistance. *They Fought Back, supra,* at 98.

However, had the Nazis known in January of 1943 at the first manifestation of Jewish Resistance that the Jewish Fighters at that time possessed only those ten pistols, the

13. *Jewish Resistance During the Holocaust,* Proceedings of the Conference on Manifestations of Jewish Resistance, Jerusalem, April 7-11, 1968 (Yad Vashem edition, Jerusalem, 1971) at 313.

Nazis could have wiped out the resistance in short order without the need for burning down the Ghetto. In the words of Tuvia Borzykowski (translated from the Yiddish):

> "Many had thought that the 18th of January was the beginning of the final liquidation of the ghetto. However, the shock of encountering resistance evidently forced the Germans to discontinue their work in order to make more thorough preparations. They must have overestimated our strength, and thought that they were dealing with a well-organized, well-armed resistance movement. Little did they know that our insurrection was nothing but a feeble beginning out of which a really organized, well-armed fighting force would eventually develop. *At the time we had only ten pistols. Had the Germans known the truth, they would probably have continued the raids, Jewish resistance would have been nipped in the bud as a minor, insignificant episode. By interrupting the extermination action on the 21st of January the Germans allowed us to better organize and arm ourselves.*"
>
> ***Between Tumbling Walls, supra,* at 29. (Emphasis added.)**

This bears repeating. Had the Germans known that the Jewish Resistance Fighters at first had only ten pistols, the Nazis would probably "have continued the raids, Jewish resistance would have been nipped in the bud as a minor, insignificant episode." *Between Tumbling Walls, supra*, at 29. That is what is wrong with the record-keeping and inspection provisions of the Gun Control Act of 1968. For these records tempt a would-be dictator into thinking that he can disarm the people before they can act to restore the Constitution through appropriate Militia action, and that he could disarm the people quickly without the need for house-by-house burnings of our cities and

suburbs. When the dictator does not know where the Arms are located, which are either potential or actual threats to his absolute power, then he must resort to burning down our cities; but this is so self-defeating that the need for such wide-scale burnings and destruction of itself is a most potent deterrent to a would-be dictator in the first place.

Today, any potential usurper would not dare even attempt a usurpation, well-knowing that the only way he could put down the people was by house-by-house burnings, just as the Nazis found out was required to put down the Jewish Fighters with but ten pistols in their hands in the Warsaw Ghetto. The existence today under both State and Federal laws of the *un*organized militias, with Arms kept in the hands of the people ready to act in such militias when needed, *prevents* the dream of dictatorship from forming in the mind of any would-be tyrant in America. The keeping of Arms in the hands of the people at large thus serves to *well-regulate the militia* and to guarantee its effectiveness in time of need.

However, as time passes under the record-keeping and inspection provisions of the Gun Control Act of 1968, the probability of such a dream of dictatorship hatching in the mind of a President monotonically increases with time, by reason of the ever increasing realistic hope of a President that he can get at enough of the people's Arms by a quick mass confiscation scheme, aided by the mass memory storage and retrieval capacity of the government's computers, before the people would have the ability to act through their State legislatures to organize their State militias. This now constantly rising probability of usurpation is directly due to the Gun Control Act's provisions which are being

challenged herein by Mr. Freeman. And this constantly rising probability of usurpation is precisely what the Second Amendment was adopted to prevent, for a Nation under a Constitution that "was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 326 (1816).

D. Widespread Interest in the Gun Control Constitutional Issues

There is no doubt that the issue of gun control is of enormous public controversy. The major network electronic news media constantly bring forth station editorials in favor of still further federal gun control legislation. Thereby advocates of the Second Amendment are constantly put on the defensive in delivering their editorial replies over the airwaves. One exception, however, is the excellent station editorial of WPIX-TV #658 of January 3, 1974 (93a) where it is cogently pointed out that:

> "The Constitution does speak of the right to bear arms, and any change in that document should be made with the greatest care, by Amendment, and not by Congressional resolution or legislation. The suggestion that an erosion of one Amendment in the Bill of Rights threatens all other amendments is something that thoughtful people must consider before succumbing to what appears to be a quick and easy solution to a vexing problem" (93a).

Indeed, if the Gun Control Act of 1968 is within the legitimate powers of Congress, then a similarly structured Statute on newspapers and magazines would likewise be constitutional.

Unfortunately for the Second Amendment, and hence for our Constitution, other station editorials favor even more severe federal gun control legislation, accompanied with the most effective appeals to the baser *Deo dandum* instinct in man; whereas more disciplined minds have seen to it that:

> "Deodands did not become part of the common law tradition of this country." *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 42 U.S.L.W. 4693, 4698-4699 (U.S., May 15, 1974).

The *Freeman* case at bar has received some national attention (94a, 95a); and is of fundamental national importance.

Summary and Conclusion

There is no doubt that this case bristles with deep constitutional issues. While Justice Holmes' dictum may be true that the power to tax does not necessarily involve the power to destroy so long as this Court sits, the real issue in the case at bar is how long can this Court continue to sit.

It has been well stated that:

> "[T]he closest the Framers came to the *affirmative* side of liberty was in the 'right of the people to [keep and] bear arms.' "
>
> Justice William O. Douglas, "The Bill of Rights", 38 N.Y. Univ. Law Rev. 207, 233 (1963; emphasis in original).

Yet there has never been such a pervasive federal statutory scheme of prohibitions and regulations on a specifically

guaranteed constitutional right of the people as spelled out in the Bill of Rights. Thus, the constitutional issues in this case are entirely different from those involved in recent cases like *United States* v. *Richardson*, 42 U.S.L.W. 5076 (U.S., June 25, 1974) and *Schlesinger* v. *Reservists Committee to Stop the War*, 42 U.S.L.W. 5088 (U.S., June 25, 1974), involving the financial accounts of the CIA and the Armed Forces Reserve membership of Members of Congress, respectively.

The Second and Ninth Amendment right of anonymity in the acquisition of Arms is at least as clearly guaranteed by the Constitution as the right to publish anonymously which was upheld in this Court in *Talley* v. *California*, 362 U.S. 60 (1960). Not only has this Court made it clear that the Second Amendment declares a right which "shall not be infringed by Congress", *United States* v. *Cruishank*, 92 U.S. 542, 553 (1876), but this Court has also made it clear that:

> "[T]he States cannot, even laying the constitutional provision in question [Second Amendment] out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government."
>
> *Presser* v. *Illinois*, 116 U.S. 252, 265 (1886), cited approvingly in *United States* v. *Miller, supra*, 307 U.S. 174, 182 n.3 (1939).

Hence, the issues in this case are so deeply rooted in our whole Constitution, even apart from the Second Amendment, as to be ranked truly as " 'fundamental'." *Palko* v. *Connecticut*, 302 U.S. 319, 325 (1937). Thus, while the Congress may have the power to "have closed the channels

of commerce entirely to negotiable instruments" [*California Bankers Ass'n* v. *Shultz*, 42 U.S.L.W. 4481, 4489 (U.S., April 1, 1974)]; nevertheless, Congress lacks this power over the commerce in "Arms" (U.S. Const. Amend. 2). For it is well-settled that the exercise of Commerce Power must always be examined to see whether it does not "infringe some constitutional prohibition." *United States* v. *Darby*, 312 U.S. 100, 115 (1941).

The legislative history of the Gun Control Act of 1968 reveals that, in enacting the Gun Control Act, Congress has attempted to "assist the States effectively to regulate firearms traffic within their borders" and to enable the federal government "to develop valid analyses of the use and distribution of firearms and ammunition in the country." House Report No. 1577 (90th Cong., 2d Sess.) at 6, 8; 3 U.S. Code Cong. & Adm. News, 4411, 4414 (1968). Neither of these purposes comports with the constitutional limitations on the States and on the Federal government. *Presser* v. *Illinois*, *supra*, 116 U.S. at 265; *United States* v. *Cruishank*, *supra*, 92 U.S., at 553. Thus Congress has legislated the Gun Control Act under its commerce power to assist the States but in violation of limitations "prescribed in the Constitution." *Kentucky Whip & Collar Co.* v. *Illinois C. R. Co.*, 299 U.S. 334, 345 (1937).

The dealer-licensing, record-keeping and inspection provision of the Gun Control Act of 1968 thus represent a basic infringement of the "private individual right [to keep Arms] guaranteed to the citizen not the soldier." *Andrews* v. *State*, 3 Heisk. (50 Tenn.) 165, 182; 8 Am. Rep. 8, 16 (1871). For the ambit of the Gun Control Act of 1968 (Titles I plus II) is so great that it includes every

type of Arms "as are usually employed in civilized warfare, and that constitute the ordinary military equipment." *Aymette* v. *State,* 2 Humphr. (21 Tenn.) 154, 158 (1840); approved in *United States* v. *Miller, supra,* 307 U.S., at 182 n. 3, *and* at 178. And as to those military Arms within the Gun Control Act, that is, as to Militia weapons, the citizens are supposed to "have the unqualified right to *keep* the weapon." *Aymette, supra,* 2 Humphr., at 160 (emphasis in original).

Therefore, in bringing this lawsuit, after being unable to obtain Arms on Second and Ninth Amendment terms solely by virtue of the so vigorously enforced Gun Control Act, Mr. Freeman is discharging his constitutional duty declared by Mr. Justice Sutherland, dissenting in *Associated Press* v. *Labor Board,* 301 U.S. 103, 141 (1937):

> "[L]et them [the people] withstand all beginnings of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it is lost because its possessors failed to stretch forth a saving hand while yet there was time."

Wherefore, the petitioner prays that a writ of certiorari be granted.

Respectfully submitted,

DAVID I. CAPLAN
Attorney for Petitioner
250 West 94th Street
New York, New York 10025

July, 1974

In the

Supreme Court of the United States

October Term, 19[illegible]

No. 74-11

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

APPENDIX (ACCOMPANYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT)

DAVID I. CAPLAN
Attorney for Petitioner
250 West 94th Street
New York, New York 10025

TABLE OF CONTENTS

PAGE

Plaintiff's Complaint 1a

Exhibits:

Letter Dated July 14, 1972 to Lewis Gene Freeman from Colonial Arms and Crafts, Inc. 7a

Letter Dated July 10, 1972 to Dave's House Of Guns from Lewis Gene Freeman 8a

Confirmation of Order, Invoice Number 2324 by Village Trading Post 9a

Defendants' Motion to Dismiss Complaint 10a

Defendants' Memorandum in Support of Motion to Dismiss 11a

Plaintiff's Motion to Add and Drop Parties and for Leave to Amend Complaint 17a

Plaintiff's Proposed Amended Complaint 18a

Exhibits:

Letter Dated July 14, 1972 to Lewis Gene Freeman from Colonial Arms and Crafts, Inc. 24a

Letter Dated July 10, 1972 to Dave's House Of Guns from Lewis Gene Freeman 25a

Confirmation of Order, Invoice Number 2324 by Village Trading Post 26a

Defendants' Motion for Extension of Time 27a

PAGE

Order Granting Motion for Extension of Time 29a

Defendants' Response to Motion to Add and Drop Parties and for Leave to Amend Complaint 30a

Order of District Court Dismissing Complaint 41a

Unpublished Order of the United States Court of Appeals for the Seventh Circuit 42a

Gun Control Act of 1968 (Public Law 90-618) Title I Thereof 46a

Regulations of Treasury Department, 26 C.F.R., Part 178 ..... 61a

Affidavit of Lewis Gene Freeman 88a

Form 4473 of Treasury Department 90a

Army Times ("Army Seizes United States in 'Esquire Plot' ") 92a

WPIX Editorial #658 (January 3, 1974) 93a

Gun Week ("Freeman Case to Supreme Court") 94a

Life Lines ("Not to keep & Not to Bear Arms") 95a

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS, INDIANA 46204

Cause No. IP-72C-380

LEWIS GENE FREEMAN
1509 Pontiac Drive
Kokomo, Indiana 46901
Social Security No. 312-30-7201
Birth Place: Howard County, Kokomo, Indiana
Birth Date: June 5, 1933

Plaintiff

vs.

1. THE UNITED STATES GOVERNMENT
2. THE UNITED STATES CONGRESS-HOUSE OF REPRESENTATIVES
3. THE UNITED STATES CONGRESS-SENATE
4. LYNDON BAYNES JOHNSON, Ex-President of the United States

Defendants

Complaint: Requests That the Federal Courts of the United States Rule Upon the United States Constitutionality of the "Gun Control Act of 1968" in Its Entirety

Comes now the plaintiff and for his cause of action against the defendants alleges and says:

I. That the "GUN CONTROL ACT OF 1968" is unconstitutional in its entirety, as it violates the United States Constitution.

Complaint

A. It violates the Second Amendment of the United States Constitution. Which states:

"A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

1. There is no better way of providing a well regulated Militia for the protection of this country against a hostile government or an invading force from within or from without the boundaries of this United States of America then for the people to keep and bear arms.

2. Since we gained our independence, the American people have always, without regulations and restrictions, exercised their right, at will, to buy, sell, keep and bear arms; and this tradition of the American people is their right. This tradition included dealings in all types and sizes of firearms including handguns, shotguns, rifles, etc.

3. The American people have an unquestionable right to own and possess firearms as a means of protection against: criminals, a communist attack and take over, a hostile government, a war, and an unjust revolution from within this country.

4. The American people have an unquestionable right to own and possess firearms for hunting and sporting purposes.

5. This law, in most cases, prevents citizens from buying firearms out of the State in which they live. For instance, I cannot buy a firearm from a dealer located in the State of New York. This is unconstitutional because citizens have been buying firearms and related equipment from all corners of the United States since and before we gained our Inde-

pendence. A citizen is forced to buy a firearm from a local dealer at his price because this law outlaws the competitive system and the desire of the citizen to purchase where he chooses. The law also prevents a citizen from selling his firearm to anyone other than a Federal Licensed dealer, which is another restriction. However, there are millions of firearms sold everyday in this country by unlicensed citizens. All one has to do is to read the for sale section of the newspapers.

B. It violates the First and Fourth amendments of the United States Constitution.

1. This law requires the Government to register and maintain records of all firearms, ammunition, and related equipment purchased by the citizens. I contend that this is unconstitutional because it violates the right of privacy.

2. History will clearly show that any government that is taken over by a hostile government or an invading force first disarms the people. * * *

C. It violates the Fifth Amendment of the United States Constitution. Which in part states:

"nor shall be compelled in any criminal case to be a witness against himself,"

1. * * *

2. My point being that it is unconstitutional to force a citizen who purchases a firearm to register it or for the Government or anyone else to maintain records of any firearm purchases since a citizen could end up as a witness against himself through the records and his own signature.

D. It violates the Fifth Amendment of the United States Constitution. Which in part states:

"nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;"

1. While this amendment does not directly affect me, it does thousands of other upstanding American citizens. This law puts citizens twice in jeopardy for the same criminal offense; and, in my opinion, it is unconstitutional. * * *

F. While I have listed a few of the Constitutional amendments that I believe this law violates, it is my request that the courts examine all other amendments and portions of the United States Constitution for possible violations. If the courts find any violation, I request that the courts rule upon them.

II. Complaint for damages.

A. I sue the United States Government for exactly $10.00 for violation of my constitutional rights by forcing the "Gun Control Act of 1968", an unconstitutional law, upon myself and the people of this land.

B. I sue the House of Representatives of the United States Congress for exactly $10.00 for assisting in or contributing to the passage of the "Gun Control Act of 1968", an unconstitutional law.

C. I sue the Senate of the United States Congress for exactly $10.00 for assisting in or contributing to the passage of the "Gun Control Act of 1968", an unconstitutional law.

D. I sue Lyndon Baynes Johnson, Johnson City, Texas, Ex-president of the United States of America,

for exactly $10.00 for signing into law the "GUN CONTROL ACT OF 1968", an unconstitutional law. * * *

B. Upon the enactment of the "GUN CONTROL ACT OF 1968", a secret police force was magnified from its original size of 978 employees to 1,626 employees and began using tactics equal only to the German Nazi Gestapo and the present Communistic secret police forces. This secret police force is known as the "BUREAU OF ALCOHOL, TOBACCO AND FIREARMS" of the Internal Revenue Service. The agents or field investigators spy on citizens, harass citizens, and display sadistic police methods. * * *

V. Just cause for filing this law suit.

A. I am a true tax paying and law abiding citizen of this United States of America concerned with freedom and the preservation of the true constitutional form of this government for our republic. I contend that it is my constitutional right to file this suit.

B. July 10, 1972, I sent an order with a cashiers check to three (3) different out of state businesses ordering firearms. In every case, I received an answer stating that they cannot send me the firearms because they require a copy of a Federal Firearm License which I cannot provide. The orders were cancelled and the money was refunded. This is a violation of my constitutional rights, since I should have the right to purchase firearms without a license.

1. I ordered a rifle from Colonial Arms and Crafts—see page #18 (7a, *infra*)

2. I ordered a shotgun from Dave's House of Guns—see page #19 (8a, *infra*)

3. I ordered a handgun from Village Trading Post—see page #20 (9a, *infra*)

C. It is a proven fact that a citizen cannot buy a firearm from a licensed dealer any place in this United States without unnecessary regulations and illegal paper work. * * *

VI. I request that the Federal Courts of this United States of America declare the "GUN CONTROL ACT OF 1968" unconstitutional in its entirety.

VII. I request that the Federal Courts of this United States of America issue a permanent restraining order against the enforcement of the "GUN CONTROL ACT OF 1968", immediately.

VIII. I am not a lawyer and am unable to retain a lawyer because it would cost too much money. * * * I am, however a law abiding tax paying citizen of this United States of America who believes that it is my Constitutional right to prepare, file, and process this suit.

IX. It is suggested, but not necessarily a request, that a full panel of judges of each Federal Court that reviews this case rule upon it.

X. I pray that the Federal Courts will accept this suit as written and not return it to me simply because it was not prepared by a lawyer.

XI. I respectfully request that the Federal Courts rule upon this suit as a constitutional issue and as presented.

XII. The entire document was prepared by Lewis Gene Freeman.

Lewis Gene Freeman

Exhibit Annexed to Complaint

Letter Dated July 14, 1972 to Lewis Gene Freeman from Colonial Arms and Crafts, Inc.

COLONIAL
ARMS
&
CRAFTS

(301) 768-1164

July 14, 1972

Lewis Gene Freeman
1509 Pontiac Drive
Kokomo, Indiana 46901

Dear Mr. Freeman:

Reference is made to your letter dated July 10 in which you ordered one (1) Siamese M98 Mauser, Cal. 8x56R, as advertised in the Shotgun News. Please be advised that all firearms must be shipped to Federal Firearms Dealers only. Therefore, if you will forward us a copy of the license of the dealer with whom you do business, we will send your order to him. Shipment of this rifle will be held pending receipt of this license.

We thank you for your order and will appreciate your help in this matter.

Yours very truly

COLONIAL ARMS AND CRAFTS, INC.
C. C. Hittel

CCH/mth

114 Baltimore-Annapolis Boulevard N.W. Glen Burnie, Maryland—21061

Exhibit Annexed to Complaint

Letter Dated July 10, 1972 to Dave's House Of Guns from Lewis Gene Freeman

1509 Pontiac Drive
Kokomo, Indiana 46901
July 10, 1972

Dave's House Of Guns
9130 Viscount Row
Dallas, Texas 75247

Dear Sir:

I noticed your ad in The Shotgun News of July 1, 1972 issue and have decided to place my order for the following firearm. One (1) 12 ga., Brazilian Boito Shotgun. I enclose $22.00 for the gun and $3.00 for shipping charges with a cashiers check in the total amount of $25.00.

This order is being sent to you by United States certified mail #384487. Please ship at once.

Very truly yours,

Lewis Gene Freeman

7/13/72

Dear Sir, Sorry — We sell only to Federal Licensed Dealers Only. Attached order & check.

Thank you
Daves

Exhibit Annexed to Complaint

Confirmation of Order, Invoice Number 2324 by Village Trading Post

VILLAGE TRADING POST
Dealer In Small Arms and Small Arms Ammunition
F.F.L. No. 31-5799
Tapes and Tape Players

131 East Main Street
Oak Hill, Ohio 45656

Phone
614-682-6800

Invoice Number 2324

SOLD TO: Lewis G. Freeman
ADDRESS: 1509 Pontiac Drive
CITY: Kokomo, Indiana ZIP: 46901 F.F.L.————

Dear Sir:

Thank you for your order of July 10 for a Titan 25 auto. We did not receive a copy of a Federal Fire Arms License with this order. Under the law passed in 1968 we can not ship a firearm to anybody except a licensed dealer or ship to licensed dealer and you can pick this item up there.

Before we can ship this item we would have to have a copy of your Federal Firearms License or of a dealer we could ship it to.

Please advise us on this matter.

Thank you

R. S. Adkins

Defendants' Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Cause No. 72C 380

LEWIS GENE FREEMAN,

Plaintiff,

vs.

THE UNITED STATES GOVERNMENT
THE UNITED STATES CONGRESS-HOUSE OF REPRESENTATIVES
THE UNITED STATES CONGRESS-SENATE
LYNDON BAYNES JOHNSON,
Ex-President of the United States

Defendants

The defendants, by counsel, move the Court to dismiss the complaint filed in this case for the reasons of lack of jurisdiction and failure to state a claim upon which relief can be granted.

Stanley B. Miller
United States Attorney
for the Southern District of Ind.

By: _____
Richard L. Darst
Assistant U. S. Attorney

Memorandum in Support of Motion to Dismiss

None of the defendants named in the Complaint except for defendant former President Johnson are suable entities. This requires dismissal of the action as to all defendants except the one defendant who is an individual. *Blackmar* v. *Guerre*, 342 U.S. 512 (1952).

According to Paragraph II D of the Complaint, plaintiff sues ex-President Johnson "for exactly $10.00 for signing into law the 'Gun Control Act of 1968', an unconstitutional law." A President or former President is, of course, not suable, individually or personally, in regard to his acts in the performance of his duties 71 U.S. (4 Wall.) 475; *Marbury* v. *Madison*, 5 U.S. (1 Cir.) 49, 64; *Trimble* v. *Johnson*, 173 F. Supp. 751 (D.C. Cir. 1959). In addition, the doctrine of "Official immunity" protects Presidents from being made to answer in a civil action for damages for their acts in their official capacities. *Barr* v. *Matteo*, 360 U.S. 564 (1959); *Howard* v. *Lyons*, 360 U.S. 593 (1959). Obviously, the decision to sign or not to sign bills enacted by Congress, is part of a President's duties, See Constitution, Article I, Section 7, Clause 2. Accordingly, ex-President Johnson should also be dismissed from the litigation.

Even aside from the above, the action should be dismissed because plaintiff has not shown that he has standing to maintain the action in his Complaint. Standing is, of course, a threshold question:

> Despite the complexities and uncertainties, some meaningful form can be given to the jurisdictional limitations placed on federal court power by the concept of standing. The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. [*Flast* v. *Cohen*, 392 U.S. 83, 99 (1958).]

Thus, it is clear that

> Decisions have in no way eroded the
>
> > 'Established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action . . .'
>
> *Ex parte Levitt,* 302 U.S. 633, 634 (1937), [*Laird* v. *Tatum,* —— U.S. ——, 40 L.W. 4850, 4853 (June 26, 1972.]

See, also *Sierra Club* v. *Morton,* —— U.S. ——, 40 L.W. 4397 (April 19, 1972); *Velvel* v. *Nixon,* 415 F. 2d 236 (10th Cir. 1969), *cert, denied,* 396 U.S. 1042. Thus, the action should be dismissed because plaintiff lacks standing.

In any event, the Gun Control Act of 1968, 18 U.S.C. 921 *et seq.* is plainly constitutional.

No substantial question of constitutional validity as to the Act is raised by this complaint.

The Supreme Court has recently upheld portions of the Gun Control Act. *United States* v. *Biswell,* 406 U.S. 311 (1972). The language used by the Supreme Court requires rejection of plaintiff's contentions:

> [Close scrutiny of this [firearms'] traffic is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. See Congressional Findings and Declaration. Note preceding 18 U.S.C. §922. Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales

to undesirable customers and the detection of the origin of particular firearms. [*United States* v. *Biswell*, 406 U.S. 311, 315-316 (1972).

Since enactment of the Gun Control Act of 1968 (18 U.S.C. Chapter 44; 26 U.S.C. Chapter 53, commonly referred to as the National Firearms Act) and Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, (18 U.S.C. App. §§1201-1203), the defense that these laws are violated of Second Amendment rights has been raised in many cases. In every reported case of which we are aware, the Second Amendment argument has been rejected. In the early case of *United States* v. *Miller*, 307 U.S. 174 (1939), the Supreme Court held that the National Fire-Arms Act was not objectionable on Second Amendment grounds in that the Amendment applies only to the organized militia of a State and not to individuals; and all cases under the Federal firearms laws decided subsequent to *Miller* have followed that rationale. *See United States* v. *Tot*, 131 F. 2d 261 (3rd Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943) holding that the Federal Firearms Act, the forerunner of Chapter 44, did not violate the Second Amendment.

The Second Amendment argument has been uniformally rejected in National Firearms Act cases since the amending of the Act by the Gun Control Act of 1968. *United States* v. *Johnson*, 441 F. 2d 1134 (5th cir. 1971); *United States* v. *Williams*, 446 F. 2d 486 (5th Cir. 1971); *United States* v. *McCutchson*, 446 F. 2d 133 (7th Cir. 1971); and *United States* v. *Tomlin*, 454 F. 2d 177 (9th Cir. 1972).

Second Amendment argument has been rejected in cases involving Title VII, relating to receipt, possession, or transportation of firearms in commerce or affecting commerce by felons and other proscribed categories of persons. *United States* v. *Synnes*, 438 F. 2d 764 (8th Cir. 1971); *United States* v. *Stevens*, 440 F. 2d 144 (6th Cir. 1971), and

United States v. *Cabbler*, 429 F. 2d 577 (4th Cir. 1970), cert. denied, 400 U.S. 901 (1970).

With respect to Chapter 44, three circuits have specifically held that the provisions of the chapter do not abridge Second Amendment rights. *United States* v. *Gross*, 313 F. Supp. 1339 (S.D. Ind. 1970), *affirmed* 451 F. 2d 1353 (7th Cir. 1971); *United States* v. *Lauchli*, 444 F. 2d 1037 (7th Cir. 1971); *United States* v. *Wilson*, 446 F. 2d 486 (5th Cir. 1971); *United States* v. *Decker*, 446 F. 2d 164 (8th Cir. 1971); and *Cody* v. *United States*, —— F. 2d —— (8th Cir. May 10, 1972).

The legislative history of the Gun Control Act of 1968 reflects careful consideration by the Congress of the question whether the Act's provisions would violate the Second Amendment right to bear arms. The Congress concluded that they would not infringe upon that right. U.S. Code Cong. & Ad. News, 2168, 2169 (1968).

One of the primary purposes of Chapter 44 (Title I of the Gun Control Act of 1968) was to channel the interstate flow of firearms through Federal firearms licensees, whose transactions in firearms, whether interstate are subject to regulation. In numerous cases under the chapter and particularly those involving purely intrastate activities (*e.g.*, prosecutions under section 922 (a) (I) for engaging in business without a license and section 922 (a) (6) for making false statements in the acquisition of firearms), the courts have held that the chapter is a valid exercise of the Commerce Power. Indeed, the constitutional predicate relating to interstate commerce was satisfied in congressional hearings and findings by Congress that the firearms trade affects commerce and that the problem can only be dealt with by Federal regulation and control. See *Gross*, *supra*; *United States* v. *Faucher*, 323 F. Supp. 1069 (D.S.D. 1971); *United States* v. *Crandall*, 453 F. 2d 1216 (1st Cir. 1972); *United States* v. *Nelson*, —— F. 2d —— (5th Cir. 1972);

United States v. *Menna*, 451 F. 2d 982 (9th Cir. 1971); *United States* v. *Trioli*, 308 F. Supp. 358 (D. Mass. 1970); and *United States* v. *Wilson*, 440 F. 2d 1069 (6th Cir. 1971).

The National Firearms Act (as amended by Title II of the Gun Control Act of 1968), which imposes a tax on the making and transfer of firearms within a limited class (*e.g.*, sawed-off rifles and shotguns, machine guns and destructive devices) has survived constitutional challenge that the Act is not a valid exercise of the taxing power of Congress but was intended to serve other purposes. *United States* v. *Ross*, 458 F. 2d 1144 (5th Cir. 1972); *United States* v. *Mathews*, 438 F. 2d 715 (5th Cir. 1971); *United States* v. *Giannini*, 455 F. 2d 147 (9th Cir. 1972); *United States* v. *Wilson*, supra; and *United States* v. *Palmer*, 435 F. 2d 653 (1st Cir. 1970).

Constitutional attack upon various provisions of the Gun Control Act, based upon Fourth, Fifth, and Sixth Amendment arguments, have likewise failed. Since the plaintiff complains specifically of the Federal firearms disabilities imposed on felons (18 U.S.C. §§922(d), (g) and (h); 18 U.S.C. App. §§1201-1203) and the regulation of sales and deliveries of firearms by Federal firearms licensees including recordkeeping requirements, we would refer only to those authorities directly in point. Thus, it has been held that section 922(g), prohibiting interstate transportation of firearms by felons and other persons within proscribed categories, is not violative of Fifth Amendment rights. *United States* v. *Meiler*, 458 F. 2d 474 (3rd Cir. 1972). (Similarly, conviction of a felon or other person within a proscribed category under Title VII for receiving, possessing, or transporting a firearm in commerce or affecting commerce has been held not to violate the constitutional prohibitions against an *ex post facto* law or bill of attainder.) Furthermore, proof of a felon's prior offense in a section 922 (g) prosecution does not offend the

Sixth Amendment privilege from being twice tried for the same offense ("double jeopardy"). *United States* v. *Phillips*, 432 F. 2d 973 (8th Cir. 1970). With respect to the 18 U.S.C. §§922 (b) (3) prohibition against sales or deliveries of firearms by licenses to unlicensed out-of-state residents, see *United States* v. *Lebman*, —— F.2d (5th Cir. June 2, 1972), wherein the court held this prohibition to be a valid exercise of the power of Congress to regulate interstate commerce.

The constitutionality of the recordkeeping requirements of the Act was considered in *United States* v. *Decker*, supra, a prosecution under 18 U.S.C. §§922 (m) and 923 (g) for failure to maintain required records and the making of false entries therein. The court held that the statutes and regulations thereunder are not unconstitutional due to vagueness.

For the foregoing reasons, the complaint should be dismissed.

Stanley B. Miller
United States Attorney for the
Southern District of Indiana

By _____
Richard L. Darst, Asst. U.S. Atty.

Motion to Add and Drop Parties, and for Leave to Amend the Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

No. 73 C 380

LEWIS GENE FREEMAN,
Plaintiff,

vs.

THE UNITED STATES GOVERNMENT *et al.*,
Defendants.

The plaintiff moves the Court, in response to the defendants' pending Motion To DISMISS THE COMPLAINT, for leave to add a defendant party, to wit, GEORGE P. SHULTZ, Secretary of the Treasury of the United States, and for leave to drop the parties THE UNITED STATES CONGRESS-HOUSE OF REPRESENTATIVES, THE UNITED STATES CONGRESS-SENATE, and LYNDON BAYNES JOHNSON, EX-PRESIDENT OF THE UNITED STATES, in order that complete relief may be afforded to the plaintiff; and the plaintiff further moves for leave to amend the Complaint in order to set forth more succinctly the Federal claims for relief.

LEWIS GENE FREEMAN
Plaintiff, for himself

Plaintiff's Proposed Amended Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. 73 C 380

LEWIS GENE FREEMAN,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, and GEORGE P. SHULTZ, Secretary of the Treasury of the United States,

Defendants.

JURISDICTION

1. Jurisdiction is founded upon the existence of a case and controversy arising by virtue of the First, Second, Third, Fourth, Fifth, Ninth and Tenth Amendments to the Constitution of the United States, and on the existence of a complaint pursuant to 28 U.S. Code Sections 1331, 1361 and 2201.

PARTIES

2. Defendant GEORGE P. SHULTZ is the Secretary of the Treasury of the United States, and as such, is empowered by the Gun Control Act of 1968, 18 US Code 926 to prescribe rules and regulations to carry out the provisions of said Gun Control Act (18 USC 921-928), pursuant to which said defendant has in fact promulgated and prescribed such rules and regulations as Part 178 of Title 26 of the Code of Federal Regulations (26 CFR 178.1-178.171), and pur-

suant to which the said defendant SHULTZ is charged with enforcement of said Gun Control Act.

3. Plaintiff is an able-bodied male person between the ages of eighteen (18) and forty-five (45) years residing in the sovereign State of Indiana, and thereby plaintiff is a member of the militia of the said State of Indiana pursuant to article 12, section 1, of the Constitution of said State of Indiana, to wit, the "sedentary militia" within the meaning of Article III of the Indiana Military Code (Indiana Militia, sections 45-2001 and 2002).

FACTS

4. On or about July 14, 1972, July 13, 1972, and July 12, 1972, respectively, plaintiff's written request for the purchase from licensed federal firearms dealers of a shotgun, a rifle, and an automatic pistol, respectively, were denied by dealers aforesaid in the sovereign States of Maryland, Texas, and Ohio, respectively, on the ground that shipment of such weapons as a shotgun, a rifle, and an automatic pistol in interstate commerce directly to the plaintiff was prohibited by the Gun Control Act of 1968 (18 USC 922 subd. (a)(2)).

5. All of the aforesaid shotgun, rifle, and automatic pistol are ordinary military equipment and are suitable for use in the militia of the State of Indiana and for use in defense of the type referred to in the Constitution of the State of Indiana, article 1, section 32.

6. The denials of plaintiff's requests for the purchase of weapons were by way of written letters to the plaintiff, true copies of which are annexed hereto and made a part hereof.

Plaintiff's Proposed Amended Complaint

7. The provisions of the Gun Control Act of 1968, to wit, 18 USC 923(g) require the dealer in firearms of the type mentioned in paragraphs 4-6 above to maintain records in writing of the disposition or sale of such firearms to such persons as the plaintiff, even in the case of such dealers located in the State of Indiana selling to a resident of the State of Indiana such as plaintiff.

8. The provisions of the Gun Control Act of 1968, to wit, 18 USC 923(g) require the dealer in firearms as aforesaid to make such records, as set forth in paragraph 7 above, available for inspection at all times by the defendant Secretary of the Treasury.

9. Pursuant to the Gun Control Act of 1968, the defendant's rules and regulations (specified in paragraph 2 above) prescribe forms for the use of dealers to record sales of firearms as aforesaid, including the identity of the firearms by model and serial number, the date of sale, the identity of the purchaser including name and address, as more fully set forth in 26 CFR 178.125, 178.124 and 178.121; and pursuant to said Gun Control Act, the defendant's rules and regulations provide for the right of entry for inspection and copying of said record of sales by defendant's agents, as more fully set forth in 26 CFR 178.23.

CLAIMS FOR RELIEF

10. By reason of the foregoing facts, the plaintiff cannot purchase a rifle, shotgun, or automatic pistol from a dealer, even in intra-state commerce, without having knowledge of all the details of such sale, including identity of plaintiff as purchaser and the identity of all firearms purchased, being made available to the defendant Secretary of the Treasury of the United States.

Plaintiff's Proposed Amended Complaint

11. The firearms mentioned in paragraph 10 above include those suitable for use in the militia of the State of Indiana and for defense of persons as specified in the Constitution of the State of Indiana, article 1, section 32, and are thereby such weapons and "arms" within the meaning of the Second Amendment to the Constitution of the United States.

12. The said Second Amendment to the Constitution of the United States guarantees to the individual the right to keep arms for the purpose of serving in the State militia and for the purpose of self-defense, as well as for exerting a strong moral check against the usurpation of Federal power by arbitrary rulers.

13. The Gun Control Act of 1968's provisions for record-keeping and inspection, as set forth in paragraphs 7 and 8 above (18 USC 923(g)), and the rules and regulation of the defendant Secretary of the Treasury thereunder (26 CFR 178.121, 178.123, 178.124 and 178.125), infringe upon plaintiff's rights under the Second Amendment to the Constitution of the United States in that said record-keeping and inspection provisions dilute the strong moral check against the arbitrary usurpations of Federal power by arbitrary rulers.

14. The said provisions of the Gun Control Act of 1968 and the rules and regulations thereunder, as set forth and identified in paragraph 13 above, violate the enumerated power of the Congress of the United States with respect to commerce as set forth in Article I, section 8, clause 3, of the body of the Constitution of the United States, insofar as said provisions as interpreted by defendant Secretary of Treasury, as well as on their face, purport to apply to purely intra-state sales of "arms" within the meaning of the Second Amendment of the Constitution of the United

States; and said provisions, together with the prohibition of inter-state sales to plaintiff as a member of the militia of the State of Indiana of the Gun Control Act of 1968, 18 USC 922(a)(2) as set forth in paragraphs 4-6 above, are likewise violative of the said power of Congress over commerce as limited by the said Second Amendment with respect to arms suitable for the militia and defense of persons particularly the right of the people to keep arms.

15. The said provisions of the Gun Control Act of 1968, and the rules and regulations thereunder of the Secretary of the Treasury (defendant herein) particularly the aforesaid record-keeping and inspection provisions, as set forth and identified in paragraph 13 above infringe upon the plaintiff's constitutional rights under the First Amendment to the Constitution of the United States (right of association), the Second Amendment thereof (right to keep arms), the Third Amendment thereof (against quartering of soldiers in time of peace), the Fourth Amendment thereof (against unreasonable searches and seizures), the Fifth Amendment thereof (against self-incrimination and deprivation of life, liberty or property without due process of law), the Ninth Amendment thereof (non-disparagement of rights retained by the people) and the Tenth Amendment thereof (reservation of powers to the States and to the people) in that pursuant to each and every of said Amendments to the Constitution as well as the combination thereof together, as per the doctrine of *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), the plaintiff has a right of privacy with respect to his purchase of those arms which are protected by the said Second Amendment to the Constitution of the United States which is infringed by said provisions of the Gun Control Act of 1968 and the said regulations of the defendant Secretary of Treasury.

Plaintiff's Proposed Amended Complaint

WHEREFORE, Plaintiff respectfully requests that this Court declare the record-keeping and inspection provisions of the Gun Control Act of 1968 unconstitutional, as well as the said Act's prohibition of direct inter-state sales to plaintiff as a member of the State of Indiana's militia, and the rules and regulations of the defendant Secretary of the Treasury thereunder (18 USC 922(a)(2), 18 USC 923(g), 26 CFR 178.121, 178.123, 178.124 and 178.125); and that this Court mandate and compel the defendant Secretary of Treasury to cancel said rules and regulations.

LEWIS GENE FREEMAN
Plaintiff, for himself

Exhibit Annexed to Proposed Amended Complaint

Letter Dated July 14, 1972 to
Lewis Gene Freeman from Colonial Arms and Crafts, Inc.

COLONIAL
ARMS
&
CRAFTS

(301) 768-1164

July 14, 1972

Lewis Gene Freeman
1509 Pontiac Drive
Kokomo, Indiana 46901

Dear Mr. Freeman:

Reference is made to your letter dated July 10 in which you ordered one (1) Siamese M98 Mauser, Cal. 8x56R, as advertised in the Shotgun News. Please be advised that all firearms must be shipped to Federal Firearms Dealers only. Therefore, if you will forward us a copy of the license of the dealer with whom you do business, we will send your order to him. Shipment of this rifle will be held pending receipt of this license.

We thank you for your order and will appreciate your help in this matter.

Yours very truly

COLONIAL ARMS & CRAFTS, INC.
C. C. Hittel

CCH/mth

114 Baltimore-Annapolis Boulevard N.W. Glen Burnie, Maryland—21061

Exhibit Annexed to Proposed Amended Complaint

Letter Dated July 10, 1972 to Dave's House Of Guns from Lewis Gene Freeman

1509 Pontiac Drive
Kokomo, Indiana 46901
July 10, 1972

Dave's House Of Guns
9130 Viscount Row
Dallas, Texas 75247

Dear Sir:

I noticed your ad in The Shotgun News of July 1, 1972 issue and have decided to place my order for the following firearm. One (1) 12 ga., Brazilian Boito Shotgun. I enclose $22.00 for the gun and $3.00 for shipping charges with a cashiers check in the total amount of $25.00.

This order is being sent to you by United States certified mail #384487. Please ship at once.

Very truly yours,

Lewis Gene Freeman

7/13/72

Dear Sir, Sorry — We sell only to Federal Licensed Dealers Only. Attached order & check.

Thank you
Daves

Exhibit Annexed to Proposed Amended Complaint

Confirmation of Order, Invoice Number 2324
by Village Trading Post

VILLAGE TRADING POST
Dealer In Small Arms and Small Arms Ammunition
F.F.L. No. 31-5799
Tapes and Tape Players

131 East Main Street
Oak Hill, Ohio 45656

Phone
614-682-6800

Invoice Number 2324

SOLD TO: Lewis G. Freeman
ADDRESS: 1509 Pontiac Drive
CITY: Kokomo, Indiana ZIP: 46901 F.F.L.————

Dear Sir:

Thank you for your order of July 10 for a Titan 25 auto. We did not receive a copy of a Federal Fire Arms License with this order. Under the law passed in 1968 we can not ship a firearm to anybody except a licensed dealer or ship to licensed dealer and you can pick this item up there.

Before we can ship this item we would have to have a copy of your Federal Firearms License or of a dealer we could ship it to.

Please advise us on this matter.

Thank you

R. S. Adkins

Defendants' Motion for Extension of Time

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 72-C-380

LEWIS GENE FREEMAN
Plaintiff

v.

UNITED STATES GOVERNMENT, *et al.*,
Defendants

The defendants, by counsel, move for an extension of time of 30 days in which to respond to Memorandum of Law In Opposition To Defendants' Motion To Dismiss The Complaint, and Motion To Add and Drop Parties, and for Leave to Amend the Complaint, and in support of such motion would show the Court as follows:

1. The above pleadings and supporting papers consisting of twenty-two pages were received by the office of the United States Attorney on October 26, 1972, they were transmitted to the Department of Justice on November 27, 1972, and they were transmitted to the Department of the Treasury on November 1, 1972.

2. The case has been reassigned to a different attorney in the Department of the Treasury, and the legal position

of the Department of the Treasury has not been forwarded to the office of the United States Attorney.

3. Mr. Jeffrey Axelrad of the Department of Justice has informed the undersigned that the Department of the Treasury will forward to this office in 30 days a response to plaintiff's motions.

WHEREFORE, the defendants move the Court to grant an extension of 30 days in which to respond to plaintiff's motion and memorandum.

Stanley B. Miller
United States Attorney

By_____
Richard L. Darst
Assistant United States Attorney

Order Granting Motion for Extension of Time

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 72-C-380

LEWIS GENE FREEMAN
Plaintiff

v.

UNITED STATES GOVERNMENT, *et al.*,
Defendants

The defendants, by counsel, have moved the Court for an extension of 30 days in which to respond to plaintiff's Memorandum of Law In Opposition to Defendants' Motion to Dismiss the Complaint and to the Motion to Add and Drop Parties, and For Leave to Amend the Complaint, and the Court, having read the motion and being duly advised in its premises, now GRANTS the motion,

It is, therefore, ORDERED that the deefndants file any response to the above-named pleadings on or before January 7, 1972.

Cale J. Holder
Judge, United States District Court

Dated: December 11, 1972

Defendants' Response to Motion to Add and Drop Parties and for Leave to Amend the Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 72-C-380

LEWIS GENE FREEMAN

v.

UNITED STATES OF AMERICA, *et al*

The original petition of the plaintiff named as defendant the United States Government, United States House of Representatives, United States Senate, and Lyndon Baines Johnson, an exPresident of the United States. While the complaint is not clear, it appears that the plaintiff is asking for a declaratory judgment to the effect that the Gun Control Act of 1968 is unconstitutional and for $10.00 in damages. However, the plaintiff has prepared a proposed amended complaint and has moved the court for an order allowing the amended complaint to be filed. The amended complaint names the United States of America and George P. Shultz, Secretary of the Treasury of the United States as defendants. The amended complaint does not ask for money damages but it does pray the court to declare the record-keeping and inspection provisions of the Gun Control Act of 1968 unconstitutional, as well as the Act's pro-

hibition of direct interstate sales to the plaintiff, and the rules and regulations of the defendant Secretary of the Treasury thereunder, and that the court mandate and compel the defendant Secretary of the Treasury to cancel the said rules and regulations. In effect the complaint now asks for a mandatory injunction against the Secretary of the Treasury.

Leave to file the proposed amended complaint should not be granted because it contains substantially the same allegations as the original complaint, and therefore, it is also subject to a motion to dismiss for the reasons that it fails to state a claim under any conceivable theory upon which relief can be granted and that the court lacks jurisdiction over the persons of the defendants. Construed most favorably toward the plaintiff, the complaint should be viewed by the court as frivolous and a sham.

Since this suit is one against the United States which has not consented thereto, the motion to dismiss for lack of jurisdiction of the court over the party defendants should be sustained on the basis of sovereign immunity. Where an official of the United States is engaged in something which the law authorizes him to do, or is acting pursuant to valid authority conferred, the suit challenging his conduct is one against the United States which cannot be sued without its consent. *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1948), *rehearing denied*, 338 U.S. 840 (1949).

Plaintiff, by obtaining relief against the officer will obtain relief against the sovereign. The sovereign can act only through agents and, when an agent's actions are restrained or mandated, the sovereign itself may, through him, be restrained or mandated. This occurs whenever the suit is brought against an officer of the sovereign in which the relief sought from him is not compensation for

an alleged wrong, but, rather, the prevention or discontinuance, *in rem*, of the law. In such a case the compulsion, which the court is asked to impose, is compulsion against the sovereign, although nominally directed against the individual officer. As such, the suit is barred, not because it is, in substance, a suit against the Government over which the court, in the absence of consent, has no jurisdiction. *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 688, 689 (1949).

A suit may fail as one against the sovereign even if it is claimed that the officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requested cannot be granted by merely ordering the cessation of the conduct complained of, but will require affirmative action by the sovereign. *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. at 691, fn. 11; *North Carolina* v. *Temple*, 134 U.S. 22 (1890). The prayer for relief by the plaintiff, which asks the court to mandate and compel the defendant Secretary of the Treasury to cancel the rules and regulations implementing the Gun Control Act of 1968 is clearly objectionable on this principle, because it requires affirmative action by the sovereign.

Furthermore, in a suit against an agency of the sovereign, as in any other suit, it is necessary that the plaintiff claim an invasion of his recognized legal rights by the sovereign. If it does not do so, the suit must fail even if he alleges that the agent acted beyond statutory authority or unconstitutionally. *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. at 693; *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 125 (1940); *Tennessee Power Co.* v. *T.V.A.*, 306 U.S. 118, 137-139 (1939); *Mine Safety Co.* v. *Forrestal*, 326 U.S. 371 (1945). But in a suit against an agency of the sovereign, it is not sufficient that the plaintiff make such a claim. Since the sovereign may not be sued, it must also appear that

the action to be restrained or directed is not an action of the sovereign. The mere allegation that the officer, acting officially, has promulgated general regulations implementing a statute, does not meet that requirement. It does not establish a wrong to the plaintiff, neither does it establish that the officer, in committing that wrong, is not exercising the power delegated to him by the sovereign. If he is exercising such powers, the action is the sovereign's and a suit to enjoin it may not be brought unless the sovereign has consented.

In the case at bar, the sovereign has taken no action against the plaintiff. If the plaintiff has a right to purchase firearms interstate, then he must redress the wrongful violation of that right by suit against those who deprived him of it, the firearms dealers who refused to sell firearms to him in interstate commerce.

Since no actual "case or controversy" exists in the current proceedings, relief is not available to the plaintiff under the Declaratory Judgment Act (28 U.S.C. §2201). *Abbot Laboratories* v. *Gardner*, 387 U.S. 136 (1967). This section does not confer jurisdiction, but rather provides an additional remedy where jurisdiction already exists. *Terminal Freight Handling Co.* v. *Solien*, 444 F.2d 669 (8th Cir. 1971).

It is firmly established that the Federal courts will not grant declaratory relief in instances where the record does not disclose an "actual controversy." *Evers* v. *Dwyer*, 358 U.S. 202, 203 (1958). The judicial power does not extend to the determination of abstract questions and claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention. *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 325 (1935). Declaratory relief is available only for a concrete case admitting of an immediate and definitive determination

of the legal rights of the parties. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240, 241 (1937). The Declaratory Judgment Act deals with "controversies" in the constitutional sense and is procedural only. In the field of public law, the courts should be alert to avoid imposition under their jurisdiction through obtaining premature intervention such as this. There must be differences of opinion or conflicts of interest between plaintiff and defendant which are "ripe for determination" as controversies over legal rights. The disagreement must not be nebulous or contingent as it is here, but must have taken on fixed and final shape so that the court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them. *Public Service Commission* v. *Wycoff Co.*, 344 U.S. at 243, 244 (1952). The proposed amended petition does not present an actual case or controversy and is therefore not justiciable. Therefore, the complaint and the proposed amended complaint should be dismissed.

Furthermore, if there is a constitutional issue presented here, the plaintiff has no standing to raise the issue. There is no allegation or proof that the life, liberty, or property of the plaintiff is in danger. The action should be dismissed on the ground that the plaintiff has no standing to litigate the constitutional questions which the complaint and the proposed amended complaint attempted to present. *Tileston* v. *Ullman*, 318 U.S. 44, 46 (1943).

This is in direct contrast to the situtation in *Griswold* v. *Connecticut*, 381 U.S. 479, 481 (1965), where both of the plaintiffs had been convicted of violating the penal statutes which they attacked as unconstitutional. The court, at page 481, said that the requirements of standing should be strict, lest the standards of "case or controversy" in Article III of the Constitution became blurred, citing *Tileston*

v. *Ullman*, 318 U.S. 44. In the *Griswold* case the doubts were removed by reason of the criminal conviction under the statute under attack. Obviously, the plaintiff in the case at bar has not been convicted for violation of the statute which is under attack.

> "* * * The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a Federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions". *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

Since the plaintiff here does not rely upon specific statutory authorization of the invocation of the judicial process, he must establish a "personal stake in the outcome of the controversy" sufficient to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Sierra Club* v. *Morton*, 40 L.W. 4397, 4399 (April 19, 1972), *Flast* v. *Cohen*, 392 U.S. 83, 101 (1968). We submit that the plaintiff seeks to do no more than vindicate his own value preferences through the judicial process.

Since enactment of the Gun Control Act of 1968 (18 U.S.C. Chapter 44; 26 U.S.C. Chapter 53, commonly referred to as the National Firearms Act), and Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Title III of the Gun Control Act of 1968 (18 U.S.C. App. §§1201-1203), the assertion that these laws

are violative of the Second Amendment has been raised in numerous cases. In every reported case of which we are aware, the Second Amendment argument has been rejected. In the early case of *United States* v. *Miller*, 307 U.S. 174 (1939), the Supreme Court held that the National Firearms Act was not objectionable on Second Amendment grounds in that the Amendment applies only to the organized militia of a State and not to individuals; and all cases under the Federal firearms laws decided subsequent to *Miller* have followed that rationale. See *United States* v. *Tot*, 131 F. 2d 261 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943).

With respect to Chapter 44, three circuits have specifically held that the provisions of the chapter do not abridge Second Amendment rights. *United States* v. *Gross*, 313 F. Supp. 1330 (S.D. 2nd 1970), affirmed 451 F. 2d 1353 (7th Cir. 1971); *United States* v. *Lauchli*, 444 F. 2d 1037 (7th Cir. 1971); *United States* v. *Wilson*, 446 F. 2d 486 (5th Cir. 1971); *United States* v. *Decker*, 446 F. 2d 164 (8th Cir. 1971); and *Cody* v. *United States*, —— F. 2d —— (8th Cir. May 10, 1972).

The legislative history of the Gun Control Act of 1968 reflects careful consideration by the Congress of the question whether this Act's provisions would violate the Second Amendment right to bear arms. The Congress concluded that they would not infringe upon that right. U.S. Code Cong. & Ad. News, 2168, 2169 (1968).

The attachments to the original complaint filed by the plaintiff show that the plaintiff attempted to purchase the following firearms:

(1) Siamese M98 Mauser, Caliber 8 x 56R

(2) 12 Gauge Brazilian Boito Shotgun

(3) Titan .25 Caliber Automatic

None of these weapons has any reasonable relationship to the preservation or efficiency of a well-regulated militia. Accordingly, the Second Amendment does not guarantee the right to keep and bear such weapons. The court may take judicial notice that these weapons are not any part of ordinary military equipment which could contribute to the common defense. *United States* v. *Miller*, 174, 178 (1938).

The Second Amendment does not apply to private citizens as an individual right, even if the firearms sought by the plaintiff had been distinctly military arms, which they were not, Congress would not be prevented from regulating the possession or use of such military arms by private persons. *United States* v. *Miller*, supra. Under the Second Amendment, the Federal government may limit the keeping and bearing of arms by an individual as well as by groups of individuals. *Cases* v. *United States*, 131 F. 2d 916 (1st Cir. 1942), *cert. denied; Velazquez* v. *United States*, 319 U.S. 770 (1942), rehearing denied 324 U.S. 889 (1945).

In *United States* v. *Tot*, 131 F. 2d 261 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943), it was recognized that the Second Amendment, unlike the First Amendment, was not adopted with individual rights in mind, but as a protection for the States in the maintenance of their militia organizations.

> "****As the language of the [Second] Amendment itself indicates it was not framed with individual rights in mind. Thus it refers to the collective right 'of the people' to keep and bear arms in connection with 'a well-regulated militia' must be taken to mean the active, organized militia of each state, which today is characterized as the state National Guard." ****Burton* v. *Sills*, 248 F. 2d 521, 53 N.J. 86 (1968).

Defendants' Response to Motion to Add and Drop Parties and for Leave to Amend the Complaint

The plaintiff asserts that his membership in the "sedentary militia" of the State of Indiana makes regulation by the Federal government of his acquisition of firearms a violation of the Second Amendment. Even assuming that the "sedentary militia" of the State of Indiana is entitled to the protection of the Second Amendment, the cases cited above clearly indicate that the right extends only to the State militia itself, and not to its individual members.

Neither do sections 922(a) (1) and 924(a) of Title I of the Gun Control Act of 1968 (18 U.S.C. §§922(a) (1), 924(a)), which make it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms, violate the Second, Fourth, or Fifth Amendments to the Constitution of the United States. *United States* v. *Wilson*, 440 F. 2d 1068 (6th Cir. 1971). Plaintiff's contention that the Act's record keeping and inspection provisions invade his right of privacy with respect to his purchase of arms allegedly protected by the Second Amendment is completely unfounded, since those provisions of the Act apply only to licensed firearms dealers. Furthermore, since plaintiff cannot show that his privacy has been invaded, there is no justiciable controversy.

The plaintiff's contention that such regulation of commerce in firearms usurp police power reserved to the states by the Tenth Amendment is plainly untenable. *United States* v. *Miller*, 307 U.S. 174, 177 (1938); *Sozinsky* v. *United States*, 300 U.S. 506, 513 (1937); *United States* v. *Smith*, 341 F. Supp. 687, 691 (N.D. Ga. 1972).

One of the primary purposes of Chapter 44 (Title I of the Gun Control Act of 1968) was to channel the interstate flow of firearms through Federal firearms licensees, whose transactions in firearms, whether interstate or intrastate, are subject to regulation. In numerous cases under the chapter, and particularly those involving purely intrastate

activities (*e.g.*, prosecutions under section 922(a) (1) for engaging in business without a license and section 922(a) (6) for making false statements in the acquisition of firearms), the courts have held that the chapter is a valid exercise of the Commerce Power. Indeed, the constitutional predicate relating to interstate commerce was satisfied in congressional hearings and findings by Congress that the firearms trade affects commerce and that the problem can only be dealt with by Federal regulations and control. See *Gross*, supra; *United States* v. *Faucher*, 323 F. Supp. 1069 (D.S.D. 1971); *United States* v. *Crandall*, 453 F. 2d 1216 (1st Cir. 1972); *United States* v. *Menna*, 451 F. 2d 982 (9th Cir. 1971); *United States* v. *Frioli*, 308 F. Supp. 358 (D. Mass. 1970); and *United States* v. *Wilson*, 440 F. 2d 1069 (6th Cir. 1971). With respect to the 18 U.S.C. & 922(b) (3) prohibition against sales or deliveries of firearms by licensees to unlicensed out-of-state residents, see *United States* v. *Lebman*, —— F. 2d —— (5th Cir. June 2, 1972), wherein the court held this prohibition to be a valid exercise of the power of Congress to regulate interstate commerce.

In *United States* v. *Biswell*, 406 U.S. 311 (1972), the Supreme Court, in upholding the constitutionality of Title I of the Gun Control Act of 1968, noted that:

> "Close scrutiny of this [firearms] traffic is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. See Congressional Findings and Declarations, note preceding 18 U.S.C. §922***"

Defendants' Response to Motion to Add and Drop Parties and for Leave to Amend the Complaint

For all of the aforementioned reasons the action should be dismissed.

Stanley B. Miller
United States Attorney

By: _____
Richard L. Darst
Assistant U.S. Attorney

By:

James R. Wachter, Director
Litigation Division
Bureau of Alcohol, Tobacco
and Firearms
Department of the Treasury

Order of District Court Dismissing Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 72-C-380

LEWIS GENE FREEMAN

v.

UNITED STATES GOVERNMENT
UNITED STATES CONGRESS HOUSE OF REPRESENTATIVES
UNITED STATES CONGRESS SENATE
LYNDON BAYNES JOHNSON,
Ex-President of the United States

Entry for June 20, 1973
Honorable Cale J. Holder, Judge

This matter came before the Court upon the plaintiff's motion to add and drop parties and for leave to amend complaint and upon the defendants motion to dismiss and the Court being duly advised in the premises now DENIES the motion to add and drop parties and to amend complaint and the Court SUSTAINS the motion to dismiss and the action is dismissed with costs vs. plaintiff. The Court adopts the brief of the defendants in support of this ruling.

Copies to:

Lewis Gene Freeman, 1509 Pontiac Dr., Kokomo, Ind. 46901

United States Attorney, 246 Federal Bldg., Indpls., Ind.

Unpublished Order of United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Submitted April 8, 1974

May 3, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. JOHN PAUL STEVENS, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge

LEWIS GENE FREEMAN,
Plaintiff-Appellant,

No. 73-1769 *vs.*

UNITED STATES OF AMERICA, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. IP 72-C-380
Cale J. Holder, *Judge*

ORDER

This matter comes before the court on the filing of the briefs by the parties and the submission by the appellee of a motion for affirmance without oral argument pursuant to Circuit Rule 22. On consideration whereof, we grant the motion and affirm the judgment of the court below.

Unpublished Order of the United States Court of Appeals for the Seventh Circuit

Plaintiff, a private citizen, gun collector, and member of the Indiana "Sedentary" Militia, attempted to obtain certain firearms[1] from three out-of-state licensed dealers.[2] They refused, however, to sell plaintiff the arms because he was not a licensed dealer. Plaintiff then filed a *pro se* civil action[3] in the district court, alleging the unconstitutionality of: 1) the record-keeping and inspection provisions of the Gun Control Act of 1968;[4] and 2) the provisions of the Act which prohibit interstate shipments and sales of firearms to non-licensees. The complaint, which sought $10.00 in damages, a declaratory judgment and a permanent injunction against enforcement of the Act, apparently predicated jurisdiction upon 28 U.S.C. §§1331 & 1361. The district court granted the government's motion to dismiss,[5] and plaintiff appealed (also *pro se*).

On appeal plaintiff has advanced two arguments.[6] First is that the prohibition against interstate sales to non-licensees is violative of the Second Amendment. Second

1. Siamese M98 Mauser, Caliber 8 x 56R; 12-gauge Brazilian Boito Shotgun; Titan .25 Caliber Automatic.

2. The dealers were located in Baltimore, Maryland; Oak Hill, Ohio; and Dallas, Texas. Plaintiff resided in Kokomo, Indiana.

3. The action was brought against the United States, the Senate, the House of Representatives and former President Johnson.

4. 18 U.S.C. ch. 44; 26 U.S.C. ch. 53; 18 U.S.C. App. §§1201-03.

5. At the same time, the district court denied plaintiff leave to add and drop parties and to file an amended complaint. The complaint essentially sought a mandamus to compel the Secretary of the Treasury to cancel regulations promulgated pursuant to the Gun Control Act.

6. In the district court plaintiff also argued that the Act violated the First, Fourth, Fifth and Eighth Amendments. None of these arguments were presented in plaintiff's brief on appeal. Thus, it is axiomatic that we need not consider them.

is that the record keeping and inspection provisions violate his right to privacy under the Ninth Amendment "particularly when combined with the Second Amendment." Since prior decisions of the federal courts make each of these claims frivolous, the district court properly dismissed the complaint for lack of subject matter jurisdiction. *Hagans* v. *Lavine*, 42 U.S.L.W. 4381, 4384 (U.S. March 26, 1974).[7]

As to plaintiff's Second Amendment claims, we specifically held in *United States* v. *Lauchli*, 444 F.2d 1037, 1041 (7th Cir. 1971), *cert. denied*, 404 U.S. 868, that the Gun Control Act does not violate this amendment. Our holding extended to both the record-keeping and inspection provisions and the sales to non-licensee provisions of the Act.[8] *Accord*, *Cody* v. *United States*, 460 F.2d 34, 36-37 (8th Cir. 1972), *cert. denied*, 409 U.S. 1010; *United States* v. *Wilson*, 446 F.2d 486, 487 (5th Cir. 1971); *United States* v. *Wilson*, 440 F.2d 1068, 1069 (6th Cir. 1971); *United States* v. *Gross*, 313 F. Supp. 1330, 1334 (S.D. Ind. 1970), *aff'd*, 451 F.2d 1355 (7th Cir. 1971); *see United States* v. *Miller*, 307 U.S. 174.

As to plaintiff's privacy claims, the Supreme Court's decision in *United States* v. *Bisrell*, 406 U.S. 311, is dispositive. In upholding a warrantless search pursuant to 923(g) of the Gun Control Act, the Court stated:

---

7. In *Hagans* the Supreme Court observed that the

> federal courts are without power to entertain claims otherwise within their jurisdiction if they are so "attenuated and unsubstantial as to be absolutely devoid of merit."

42 U.S.L.W. at 4384, *quoting*, *Newburyport Water Co.* v. *Newburyport*, 193 U.S. 561, 579.

8. It is perhaps important to note that nothing in the Gun Control Act absolutely prevents plaintiff from obtaining firearms. Such arms may easily be secured by placing an order through a licensed dealer.

Unpublished Order of the United States Court of Appeals for the Seventh Circuit

> [C]lose scrutiny of . . . [the interstate traffic in firearms] is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. See Congressional Findings and Declaration, Note preceding 18 U.S.C. §922. Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms.

406 U.S. at 315-16. In short, whatever privacy "rights" plaintiff may have, they are clearly subservient to the paramount considerations underlying the record-keeping and inspection procedures of the Gun Control Act.

Accordingly, we hold that the district court properly dismissed plaintiff's complaint for lack of subject matter jurisdiction. In view of this holding, we need not consider the government's arguments concerning the case or controversy requirement of Article III of the Federal Constitution and sovereign immunity. Nor do we express any view on whether jurisdiction was proper under 28 U.S.C. §§1331 & 1361.[9]

AFFIRMED.

---

9. Even if jurisdiction were proper under either of these statutes, our holding in this case would be unaffected. *See Hagans* v. *Lavine*, 42 U.S.L.W. 4381, 4384 (U.S. March 26, 1974).

Public Law 90-618
90th Congress, H. R. 17735
October 22, 1968

An Act

To amend title 18, United States Code, to provide for better control of the interstate traffic in firearms.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Gun Control Act of 1968".

TITLE I—STATE FIREARMS CONTROL ASSISTANCE

PURPOSE

SEC. 101. The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

SEC. 102. Chapter 44 of title 18, United States Code, is amended to read as follows:

"Chapter 44.—FIREARMS

"Sec.
"921. Definitions.
"922. Unlawful acts.
"923. Licensing.
"924. Penalties.
"925. Exceptions: Relief from disabilities.
"926. Rules and regulations.
"927. Effect on State law.
"928. Separability clause.

"§ 921. Definitions

"(a) As used in this chapter—

"(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(2) The term 'interstate or foreign commerce' includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

"(3) The term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

"(4) The term 'destructive device' means—

"(A) any explosive, incendiary, or poison gas—

"(i) bomb,

"(ii) grenade,

"(iii) rocket having a propellant charge of more than four ounces,

"(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

"(v) mine, or

"(vi) device similar to any of the devices described in the preceding clauses;

"(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

"(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes.

"(5) The term 'shotgun' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

"(6) The term 'short-barreled shotgun' means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

"(7) The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

"(8) The term 'short-barreled rifle' means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

"(9) The term 'importer' means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term 'licensed importer' means any such person licensed under the provisions of this chapter.

"(10) The term 'manufacturer' means any person engaged in the manufacture of firearms or ammunition for purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of this chapter.

"(11) The term 'dealer' means (A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of this chapter.

"(12) The term 'pawnbroker' means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money.

"(13) The term 'collector' means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics, as the Secretary shall by regulation define, and the term 'licensed collector' means any such person licensed under the provisions of this chapter.

"(14) The term 'indictment' includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

"(15) The term 'fugitive from justice' means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

"(16) The term 'antique firearm' means—

"(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

"(B) any replica of any firearm described in subparagraph (A) if such replica—

"(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

"(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

"(17) The term 'ammunition' means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

"(18) The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"(19) The term 'published ordinance' means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

"(20) The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

"(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

"§ 922. Unlawful acts

"(a) It shall be unlawful—

"(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

"(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

"(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

"(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

"(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

"(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

"(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

"(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

"(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

"(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

"(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

"(2) any firearm or ammunition to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

"(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;

"(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

"(5) any firearm or ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

"(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

"(1) the transferee submits to the transferor a sworn statement in the following form:

"'Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____

_____

Signature _____ Date _____'

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

"(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

"(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

"(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

"(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) is a fugitive from justice;

"(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) has been adjudicated as a mental defective or has been committed to any mental institution.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

"(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter.

"(f) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

"(g) It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

"(h) It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

"(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

"(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

"(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

"(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

"(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

"§ 923. Licensing

"(a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

"(1) If the applicant is a manufacturer—

"(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

"(B) of firearms other than destructive devices, a fee of $50 per year; or

"(C) of ammunition for firearms other than destructive devices, a fee of $10 per year.

"(2) If the applicant is an importer—

"(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of $50 per year.

"(3) If the applicant is a dealer—

"(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

"(B) who is a pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of $25 per year; or

"(C) who is not a dealer in destructive devices or a pawnbroker, a fee of $10 per year.

"(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

"(c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license.

"(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

"(A) the applicant is twenty-one years of age or over;

"(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) and (h) of this chapter;

"(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

"(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application; and

"(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time.

"(2) The Seretary must approve or deny an application for a license within the forty-five-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

"(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

"(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

"(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

"(g) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.

"(h) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

"(i) Licensed importers and licensed manufacturers shall identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.

"(j) This section shall not apply to anyone who engages only in hand loading, reloading, or custom loading ammunition for his own firearm, and who does not hand load, reload, or custom load ammunition for others.

"§ 924. Penalties

"(a) Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

"(c) Whoever—

"(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

"(d) Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"§ 925. Exceptions: Relief from disabilities

"(a)(1) The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

"(2) The provisions of this chapter shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

"(3) Unless otherwise prohibited by this chapter or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Secretary of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

"(4) When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

"(5) For the purpose of paragraphs (3) and (4) of this subsection, the term 'United States' means each of the several States and the District of Columbia.

"(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

"(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

"(d) The Secretary may authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition—

"(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

"(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

"(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms; or

"(5) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary may permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

"§ 926. Rules and regulations

"The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including—

"(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license; and

"(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection.

The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"§ 927. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

"§ 928. Separability

"If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

SEC. 103. The administration and enforcement of the amendment made by this title shall be vested in the Secretary of the Treasury.

SEC. 104. Nothing in this title or the amendment made thereby shall be construed as modifying or affecting any provision of—

(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.

SEC. 105. (a) Except as provided in subsection (b), the provisions of chapter 44 of title 18, United States Code, as amended by section 102 of this title, shall take effect on December 16, 1968.

(b) The following sections of chapter 44 of title 18, United States Code, as amended by section 102 of this title shall take effect on the date of the enactment of this title: Sections 921, 922(l), 925(a)(1), and 925(d).

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

* * *

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Subpart A—Introduction

Sec.
178.1 Scope of regulations.
178.2 Relation to other provisions of law.

Subpart B—Definitions

178.11 Meaning of terms.

Subpart C—Administrative and Miscellaneous Provisions

178.21 Forms prescribed.
178.22 Emergency variations from requirements.
178.23 Right of entry and examination.
178.24 Published ordinances.
178.25 Disclosure of information.
178.26 Curio and relic determination.
178.27 Destructive device determination.
178.28 Transportation of destructive devices and certain firearms.
178.29 Out-of-State acquisition of firearms by nonlicensees.
178.30 Out-of-State disposition of firearms by nonlicensees.
178.31 Delivery by common or contract carrier.
178.32 Prohibited shipment, transportation, or receipt of firearms and ammunition by certain persons.
178.33 Stolen firearms and ammunition.
178.34 Removed, obliterated, or altered serial number.
178.35 Skeet, trap, target, and similar shooting activities.

Subpart D—Licenses

178.41 General.
178.42 License fees.
178.43 License fee not refundable.
178.44 Original license.
178.45 Renewal of license.
178.46 Procedure by District Director.
178.47 Issuance of license.
178.48 Correction of error on license.
178.49 Duration of license.
178.50 Locations covered by license.
178.51 License not transferable.
178.52 Change of address.
178.53 Change in trade name.
178.54 Change of control.
178.55 Continuing partnerships.
178.56 Right of succession by certain persons.
178.57 Discontinuance of business.
178.58 State or other law.
178.59 Abandoned application.
178.60 Certain continuances of business.

Subpart E—License Proceedings

Sec.
178.71 Denial of an application for license.
178.72 Hearing after application denial.
178.73 Notice of contemplated revocation.
178.74 Request for hearing after notice of contemplated revocation.
178.75 Hearing after notice of revocation.
178.76 Recommended decision of hearing examiner.
178.77 Certification and transmittal of record and recommended decision to Director.
178.78 Decision of Director.
178.79 Service on applicant or licensee.
178.80 Representation at a hearing.
178.81 Designated place of hearing.
178.82 Operations by licensees after notice.

Subpart F—Conduct of Business

178.91 Posting of license.
178.92 Identification of firearms.
178.93 Authorized operations by a licensed collector.
178.94 Sales or deliveries between licensees.
178.95 Certified copy of license.
178.96 Out-of-State and mail order sales.
178.97 Loan or rental of firearms.
178.98 Sales or deliveries of destructive devices and certain firearms.
178.99 Certain prohibited sales or deliveries.
178.100 Record of transactions.

Subpart G—Importation

178.111 General.
178.112 Importation by a licensed importer.
178.113 Importation by other licensees.
178.114 Importation by members of the U.S. Armed Forces.
178.115 Exempt importation.
178.116 Conditional importation.
178.117 Function outside a customs territory.

Subpart H—Records

178.121 General.
178.122 Records maintained by importers.
178.123 Records maintained by manufacturers.
178.124 Firearms transaction record.
178.125 Record of receipt and disposition.
178.126 Furnishing transaction information.
178.127 Discontinuance of business.

Subpart I—Exemptions

178.141 General.
178.142 Effect of Presidential pardon.
178.143 Relief from disabilities incurred by indictment.
178.144 Relief from disabilities incurred by conviction.
178.145 Research organizations.
178.146 Deliveries by mail to certain persons.
178.147 Repair of firearm.
178.148 Ammunition loading for personal use.

Subpart J—Penalties, Seizures, and Forfeitures

Sec.
178.161 False statement or representation.
178.162 Transportation or receipt to commit a crime.
178.163 Commission of a Federal crime.
178.164 Receipt, etc., of firearms by certain persons.
178.165 Receipt, etc., of firearms by certain employees.
178.166 Seizure and forfeiture.

Subpart K—Exportation

178.171 Exportation.

AUTHORITY: The provisions of this Part 178 issued under 82 Stat. 1213–1226, 18 U.S.C. 921–928, 82 Stat. 236, as amended, unless otherwise noted.

SOURCE: The provisions of this Part 178 appear at 33 F.R. 18555, Dec. 14, 1968; 33 F.R. 18699, Dec. 18, 1968, unless otherwise noted.

Subpart A—Introduction

§ 178.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213), and Title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 236; 18 U.S.C. Appendix) of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 197) as amended by Title III of the Gun Control Act of 1968 (82 Stat. 1236).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in firearms and ammunition;

(2) The licensing of manufacturers, importers, and collectors of, and dealers in, firearms and ammunition;

(3) The conduct of business or activity by licensees;

(4) The importation of firearms and ammunition;

(5) The records and reports required of licensees;

(6) Relief from disabilities under this part; and

(7) Exempt interstate and foreign commerce in firearms and ammunition.

(c) *Federal Firearms Act licenses.* This part fully applies to operations by persons licensed under the Federal Firearms Act and Part 177 of this chapter who are continuing their operations under such license pursuant to section 907 of the

Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 235). Any reference in this part to "license," "licensee," licensed dealer," "licensed importer," "licensed manufacturer," etc., shall apply equally as the case may be to licenses and persons licensed under the Federal Firearms Act who are continuing operations pursuant to a license issued under that Act.

§ 178.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in firearms or ammunition. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), and regulations thereunder. For statutes applicable to nonmailable firearms, see 18 U.S.C. 1715 and regulations thereunder.

Subpart B—Definitions

§ 178.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. Chapter 44 of title 18 of the United States Code.

Ammunition. Ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer.

Antique firearm. (a) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and (b) any replica of any firearm described in paragraph (a) of this definition if such replica (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Assistant Regional Commissioner. An Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under the direction and supervision of, a Regional Commissioner of Internal Revenue.

Business premises. The property on which firearms or ammunition importing, manufacturing or dealing business is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term.

Collection premises. The premises described on the license of a collector as the location at which he maintains his collection of curios and relics.

Collector. Any person who acquires, holds, or disposes of firearms or ammunition as curios or relics.

Commerce. Travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

Commissioner. The Commissioner of Internal Revenue.

Crime punishable by imprisonment for a term exceeding 1 year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulations of business practices excluded from the meaning of the term under provisions contained in this part, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

Curios or relics. Firearms or ammunition which are of special interest to collectors by reason of some quality other than is ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms and ammunition must fall within one of the following categories:

(a) Firearms and ammunition which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms and ammunition which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms or ammunition which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm or item of ammunition under this category may be established by evidence of present value and evidence that like firearms or ammunition are not available except as collector's items, or that the value of like firearms or ammunition available in ordinary commercial channels is substantially less.

Customs officer. Any officer of the Bureau of Customs or any agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a Regional Commissioner of Customs, or by another principal customs officer under delegated authority, to perform the duties of an officer of the Bureau of Customs.

Dealer. Any person engaged in the business of selling firearms or ammunition at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker.

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding subparagraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this definition and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes.

Director. The Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington, D.C. 20224.

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a Bad Conduct Discharge or a Dishonorable Discharge.

District Director. A District Director of Internal Revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Federal Firearms Act. Chapter 18 of title 15, United States Code, as in effect on December 15, 1968.

Felony. Any offense punishable by imprisonment for a term exceeding 1 year. The term shall not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of 2 years or less.

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics.

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Fugitive from justice. Any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

Importation. The bringing of a firearm or ammunition into the United States; except that the bringing of a firearm or ammunition from outside the United States into a foreign-trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, shall not be deemed importation.

Importer. Any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

Indictment. Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

Internal Revenue Code of 1954. Title 26, United States Code.

Internal revenue district. An internal revenue district under the jurisdiction of a District Director of Internal Revenue.

Internal revenue region. An internal revenue region under the jurisdiction of a Regional Commissioner of Internal Revenue.

Interstate or foreign commerce. Includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia. The term shall not include commerce between places within the same State but through any place outside of that State.

Licensed collector. A collector of curios and relics only and licensed under the provisions of this part.

Licensed dealer. A dealer licensed under the provisions of this part, and a dealer licensed under the Federal Firearms Act if such license is deemed valid under section 907 of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 235).

Licensed importer. An importer licensed under the provisions of this part, and a manufacturer (as that term was defined in the Federal Firearms Act) licensed under the Federal Firearms Act if such license is deemed valid under section 907 of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 235).

Licensed manufacturer. A manufacturer licensed under the provisions of this part, and a manufacturer (as that term was defined in the Federal Firearms Act) licensed under the Federal Firearms Act if such license is deemed valid under section 907 of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 235).

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Manufacturer. Any person engaged in the manufacture of firearms or ammunition for purposes of sale or distribution.

National Firearms Act. Chapter 53 of the Internal Revenue Code of 1954.

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Published ordinance. A published law of any political subdivision of a State which the Director determines to be relevant to the enforcement of this part and which is contained on a list compiled by the Director, which list is published in the FEDERAL REGISTER revised annually, and furnished to each licensee under this part.

Regional Commissioner. A Regional Commissioner of Internal Revenue.

Rifle. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

Short-barreled rifle. A rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

Short-barreled shotgun. A shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches.

Shotgun. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

State. A State of the United States. The term shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence. The State in which an individual regularly resides, or maintains his home, or if such person is on active duty as a member of the United States Armed Forces, the State in which his permanent duty station is located: *Provided,* That an alien who is legally in the United States shall be considered to be a resident of the State in which (a) he is residing and has so resided for a period of at least 90 days prior to the date of sale or delivery of a firearm or ammunition, or (b) his embassy or consulate is located if the principal officer of such embassy or consulate issues a written statement to such alien authorizing his acquisition of a firearm or ammunition. Temporary sojourn in a State does not make the State of temporary sojourn the State of residence.

Example 1. A maintains his home in State X. He travels to State Y on a hunting, fishing, business or other type of trip. He does not become a resident of State Y by reason of such trip.

Example 2. A maintains a home in State X and a home in State Y. He resides in State X except for the summer months of the year and in State Y for the summer months of the year. During the time that he actually resides in State X he is a resident of State X, and during the time that he actually resides in State Y he is a resident of State Y.

Unserviceable firearm. A firearm which is incapable of discharging a shot by means of an explosive and is incapable of being readily restored to a firing condition.

U.S.C. The United States Code.

Subpart C—Administrative and Miscellaneous Provisions

§ 178.21 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

§ 178.22 Emergency variations from requirements.

(a) The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations from the specific requirements (1) are necessary, (2) will not hinder the effective administration of this part, and (3) will not be contrary to any provisions of law.

* * *

* * *

§ 178.23 Right of entry and examination.

Any internal revenue officer may enter during business hours the premises, including places of storage, of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of inspecting or examining any records or documents required to be kept by such importer, manufacturer, dealer, or collector under this part, and any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises.

§ 178.24 Published ordinances.

The Director is authorized to compile, publish in the FEDERAL REGISTER, annually revise, and furnish to each licensee, a list of published ordinances which are relevant to the enforcement of this part.

§ 178.25 Disclosure of information.

Upon receipt of written request of any State or any political subdivision thereof, the Assistant Regional Commissioner may make available to such State or any political subdivision thereof, any information which the Assistant Regional Commissioner may obtain by reason of the provisions of the Act with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.

§ 178.26 Curio and relic determination.

A licensed collector who desires to obtain a determination whether a particular firearm or ammunition is a curio or relic shall submit a written request, in duplicate, for a ruling thereon to the Assistant Regional Commissioner. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm or ammunition, and such photographs, diagrams, or drawings as may be necessary to enable the Assistant Regional Commissioner to make his determination. The Assistant Regional Commissioner may require the submission to him, or to an officer designated by him, of the firearm or ammunition for examination and evaluation. If the submission of the firearm or ammunition is impractical, the licensed collector shall so advise the Assistant Regional Commissioner and designate the place where the firearm or ammunition will be available for examination and evaluation.

§ 178.27 Destructive device determination.

The Director shall determine in accordance with 18 U.S.C. 921(a)(4) whether a device is excluded from the definition of a destructive device. A person who desires to obtain a determination under that provision of law for any device which he believes is not likely to be used as a weapon shall submit a written request, in triplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer thereof, the purpose of and use for which it is intended, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make his determination. The Director may require the submission to him, of a sample of such device for examination and evaluation. If the submission of such device is impracticable, the person requesting the ruling shall so advise the Director and designate the place where the device will be available for examination and evaluation.

§ 178.28 Transportation of destructive devices and certain firearms.

(a) The Assistant Regional Commissioner for the internal revenue region in which a person resides may authorize that person to transport in interstate or foreign commerce any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, if he finds that such transportation is reasonably necessary and is consistent with public safety and applicable State and local law. A person who desires to transport in interstate or foreign commerce any such device or weapon shall submit a written request so to do, in duplicate, to the Assistant Regional Commissioner. The request shall contain:

(1) A complete description and identification of the device or weapon to be transported;

(2) A statement whether such transportation involves a transfer of title;

(3) The need for such transportation;

(4) The approximate date such transportation is to take place;

(5) The present location of such device or weapon and the place to which it is to be transported;

(6) The mode of transportation to be used (including, if by common or contact carrier, the name and address of such carrier); and

(7) Evidence that the transportation or possession of such device or weapon is not inconsistent with the laws at the place of destination.

(b) No person shall transport any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle in interstate or foreign commerce under the provisions of this section until he has received specific authorization so to do from the Assistant Regional Commissioner. Authorization granted under this section does not carry or import relief from any other statutory or regulatory provision relating to firearms.

(c) This section shall not be construed as requiring licensees to obtain authorization to transport destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles in interstate or foreign commerce: *Provided,* That in the case of a licensed importer, licensed manufacturer, or licensed dealer, such a licensee is qualified under the National Firearms Act (see also Part 179 of this chapter) and this part to engage in the business with respect to the device or weapon to be transported, and that in the case of a licensed collector, the device or weapon to be transported is a curio or relic.

§ 178.29 Out-of-State acquisition of firearms by nonlicensees.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, shall transport into or receive in the State where he resides (or if a corporation or other business entity, where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State: *Provided,* That the provisions of this section (a) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (b) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of §§ 178.30, 178.96, and 178.97, and (c) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of the Act.

§ 178.30 Out-of-State disposition of firearms by nonlicensees.

No nonlicensee shall transfer, sell, trade, give, transport, or deliver any firearm to any other nonlicensee, who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or if a corporation or other business entity, where it maintains a place of business): *Provided,* That the provisions of this section shall not apply to (a) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or any acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (b) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes.

§ 178.31 Delivery by common or contract carrier.

(a) No person shall knowingly deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped: *Provided,* That any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of that trip without violating any provision of this part.

(b) No common or contract carrier shall transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of any provision of this part: *Provided, however,* That the provisions of this paragraph shall not apply in respect to the transportation of firearms or ammunition in in-bond shipment under Customs laws and regulations.

§ 178.32 Prohibited shipment, transportation, or receipt of firearms and ammunition by certain persons.

(a) No person may ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954), or (4) has been adjudicated as a mental defective or who has been committed to a mental institution.

(b) A firearm may not be received, possessed, or transported in commerce or affecting commerce by any person who (1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, (2) has been discharged from the Armed Forces under dishonorable conditions, (3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or (4) having been a citizen of the United States has renounced his citizenship, or (5) being an alien is illegally in the United States.

(c) Any individual who to his knowledge and while being employed by any person coming within a classification contained in paragraph (b) of this section, may not in the course of such employment receive, possess, or transport a firearm in commerce or affecting commerce.

(d) The provisions of paragraph (b) of this section shall not apply to any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison, and the provisions of paragraphs (b) and (c) of this section shall not apply to any person, or any employee employed by such person, who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

§ 178.33 Stolen firearms and ammunition.

No person shall transport or ship in interstate or foreign commerce any stolen firearm or stolen ammunition knowing or having reasonable cause to believe that the firearm or ammunition was stolen, and no person shall receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition which is moving as, which is a part of, or which constitutes interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

§ 178.34 Removed, obliterated, or altered serial number.

No person shall knowingly transport, ship, or receive in interstate or foreign commerce any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

§ 178.35 Skeet, trap, target, and similar shooting activities.

Licensing and recordkeeping requirements, including permissible alternate records, for skeet, trap, target, and similar organized activities shall be determined by the Assistant Regional Commissioner on a case by case basis.

Subpart D—Licenses

§ 178.41 General.

(a) Each person intending to engage in business as in importer or manufacturer of, or a dealer in, firearms or ammunition shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who desires to obtain the privileges granted by the Act and this part to a licensed collector may obtain such a license under the provisions of this subpart.

(b) Each person intending to engage in business as a firearms or ammunition importer, manufacturer, or dealer shall file an application, with the required fee (see § 178.42), with the District Director for the internal revenue district in which his premises are to be located, and, pursuant to § 178.47, receive the license required for such business from the Assistant Regional Commissioner. A separate license must be obtained for each business and each place at which the applicant is to do business. Such license shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license, and for the period stated on the license: *Provided*, That it shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in the same type of firearms or ammunition authorized by his license to be imported or manufactured: *Provided further*, That the payment of the license fee as an importer or manufacturer of, or a dealer in, destructive devices and ammunition for destructive devices includes the privilege of importing, manufacturing or dealing in, as the case may be, firearms other than destructive devices and ammunition for other than destructive devices by such a licensee at his licensed premises.

(c) Each person seeking the privileges of a collector licensed under this part shall file an application, with the required fee (see §178.42), with the District Director for the internal revenue district in which his collection premises are to be located, and, pursuant to § 178.47, receive from the Assistant Regional Commissioner the license covering the collection of curios and relics. A separate license may be obtained for each collection premises, and such license shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, receive, and acquire curios and relics in interstate or foreign commerce, and to make disposition of curios and relics in interstate or foreign commerce to any other person licensed under the provisions of this part, for the period stated on the license.

(d) The collector license provided by this part shall apply only to transactions related to a collector's activity in acquiring, holding or disposing of curios and relics. A collector's license does not authorize the collector to engage in a business required to be licensed under the Act or this part. Therefore, if the acquisitions and dispositions of curios and relics by a collector bring the collector within the definition of a manufacturer, importer, or dealer under this part, he shall qualify as such. (See also §178.93 of this part.)

§ 178.42 License fees.

Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

(a) For a manufacturer:

(1) Of destructive devices or ammunition for destructive devices—$1,000 per year.

(2) Of firearms other than destructive devices—$50 per year.

(3) Of ammunition for firearms other than destructive devices—$10 per year.

(b) For an importer:

(1) Of destructive devices or ammunition for destructive devices—$1,000 per year.

(2) Of firearms other than destructive devices or ammunition for firearms other than destructive devices—$50 per year.

(c) For a dealer:

(1) In destructive devices or ammunition for destructive devices—$1,000 per year.

(2) Who is a pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices—$25 per year.

(3) Who is not a dealer in destructive devices or a pawnbroker—$10 per year.

(d) For a collector of curios and relics—$10 per year.

§ 178.43 License fee not refundable.

No refund of any part of the amount paid as a licensee fee shall be made where the operations of the licensee are, for any reason, discontinued during the period of an issued license. However, the license fee submitted with an application for a license shall be refunded if that application is denied.

§ 178.44 Original license.

(a) Any person who intends to engage in business as a firearms or ammunition importer, manufacturer, or dealer on or

after the effective date of this part, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted application for renewal of his previous license issued under this part, shall, except as provided in paragraph (c) of this section, file with the District Director for the internal revenue district in which the applicant is to do business an application, Form 7 (Firearms), in duplicate. The application, Form 7 (Firearms), shall include information as to the ownership of the business, the type of firearms or ammunition to be dealt in, the type of business premises, the business hours, the business history, and the identity of the responsible persons in the business. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 7 (Firearms) may be obtained from any Assistant Regional Commissioner or from any District Director.

(b) Any person who desires to obtain the privileges granted to a licensed collector under the Act and this part on or after the effective date of this part, or who has not timely submitted application for renewal of his previous license issued under this part, shall file with the District Director for the internal revenue district in which the applicant is to maintain his collection premises an application, Form 7 (Firearms), in duplicate. The application, Form 7 (Firearms), shall include information as to the ownership of the activity, the type of premises to be maintained by the applicant for the activity, and the identity of the responsible persons in the activity. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by a $10 fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 7 (Firearms) may be obtained from any Assistant Regional Commissioner or from any District Director.

(c) Any person holding a valid license issued pursuant to the provisions of the Federal Firearms Act to manufacture, import or deal in firearms or ammunition for pistols or revolvers may continue to conduct such business under such license until that license expires according to its terms, unless that license be sooner terminated pursuant to applicable provisions of law. If the holder of a license issued pursuant to the Federal Firearms Act intends to continue his firearms or ammunition business following the expiration of such license, he shall comply with the provisions contained in paragraph (a) of this section prior to the expiration of the period covered by the license, and upon compliance with those provisions such an applicant may continue such operations as were authorized by his expired license under this part until his application is finally acted upon.

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, he shall, unless otherwise notified in writing by the Assistant Regional Commissioner, execute and file prior to the expiration of his license an application for license renewal, Form 8 (Firearms) (Part 3), accompanied by the required fee, with the District Director for the internal revenue district in which the business or activity is operated. The Assistant Regional Commissioner may, in writing, require an applicant for license renewal to also file completed Form 7 (Firearms) in the manner required by § 178.44. In the event the licensee does not timely file a Form 8 (Firearms) (Part 3), he must file a Form 7 (Firearms) as required by § 178.44, and obtain the required license before continuing business or collecting activity. If a Form 8 (Firearms) (Part 3) is not timely received through the mails, the licensee should so notify his Assistant Regional Commissioner.

§ 178.46 Procedure by District Director.

Upon receipt of an application for an original license on Form 7 (Firearms) or an application for renewal of a license on Form 8 (Firearms) (Part 3) or a required Form 7 (Firearms), the District Director shall deposit the fee accompanying the license application and forward the application to the Assistant Regional Commissioner. Where an application is filed with an insufficient fee, the application and any fee submitted shall be returned.

* * *

Subpart E—License Proceedings

* * *

§ 178.82 Operations by licensees after notice.

In any case where denial or revocation proceedings are pending before the Internal Revenue Service, or notice of denial or revocation has been served on the licensee and he has filed timely request for a hearing, the license in the possession of the licensee shall remain in effect even though (a) such license has expired, or (b) the revocation date specified in the notice of revocation on Form 4500 served on the licensee has passed: *Provided*, That under the condition of paragraph (a) of this section, the licensee has timely filed an application for the renewal of his license. If a licensee is dissatisfied with a posthearing decision revoking the license or denying the application, as the case may be, he may, pursuant to 18 U.S.C. 923(f)(3), within 60 days after receipt of the final notice denying the application or revoking the license, file a petition for judicial review of such action. Such petition should be filed with the U.S. district court for the district in which the applicant or licensee resides or has his principal place of business. In such case, when the Assistant Regional Commissioner finds that justice so requires, he may (1) postpone the effective date of revocation of a license or (2) authorize continued operations under the expired license, as applicable, pending judicial review.

Subpart F—Conduct of Business

§ 178.91 Posting of license.

Any license issued under this part shall be kept posted and kept available for inspection on the premises covered by the license.

§ 178.92 Identification of firearms.

Each licensed manufacturer or licensed importer of any firearm manufactured or imported on or after the effective date of this part shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer; in the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) wherein the licensed manufacturer maintains his place of business; and in the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) of the importer: *Provided*, That the Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of letter application, in duplicate, from same showing that such other identification is reasonable and will not hinder the effective administration of this part: *Provided, further*, That in the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of letter application, in duplicate, from the licensed man-

ufacturer or licensed importer showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable. A firearm frame or receiver which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a licensed manufacturer or licensed importer, shall be identified as required by this section.

§ 178.93 Authorized operations by a licensed collector.

The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms or ammunition other than curios or relics, or any transportation, shipment, or receipt of firearms or ammunition other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm or ammunition other than a curio or relic. (See also § 178.50.)

§ 178.94 Sales or deliveries between licensees.

A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise disposing of firearms or ammunition, and a licensed collector selling or otherwise disposing of curios or relics, to another licensee shall verify the identity and licensed status of the transferee prior to making the transaction. On and after February 14, 1969, such verification shall be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by such other means as the transferor deems necessary: *Provided*, That it shall not be required (a) for a transferee who has furnished a certified copy of his license to a transferor to again furnish such certified copy to that transferor during the term of the transferee's current license, and (b) for licensees of multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization: *Provided further*, That a multilicensed business organization may furnish to a transferor, in lieu of a certified copy of each license, a list, certified to be true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the transferor may sell or otherwise dispose of firearms and ammunition as provided by this section to any licensee appearing on such list without requiring a certified copy of a license therefrom. A transferor licensee who has the certified information required by this section may sell or dispose of firearms or ammunition to a licensee for not more than 45 days following the expiration date of the transferee's license.

§ 178.95 Certified copy of license.

Each person licensed under the provisions of this part shall be furnished together with his license a copy thereof for his certification. If such a person desires an additional copy of his license for certification and for use pursuant to § 178.94, he shall:

(a) Make a reproduction of the copy of his license and execute same, or

(b) Make a reproduction of his license, enter upon such reproduction the statement: "I certify that this is a true copy of a license issued to me to engage in the business specified in Item 5" and sign his name adjacent thereto, or

(c) Submit a request, in writing, for certified copies of his license to the Assistant Regional Commissioner for the internal revenue region in which the license was issued. The request shall set forth the name, trade name (if any) and address of the licensee, and the number of copies of the license desired. There shall be imposed a fee of $1 for each copy of a license issued by the Assistant Regional Commissioner under the provisions of this paragraph. Fee payment shall accompany each such request for additional copies of a license. Such fee shall be paid by (1) cash, or (2) money order or check made payable to the Internal Revenue Service.

§ 178.96 Out-of-State and mail order sales.

(a) The provisions of this section shall apply in any case where a firearm purchased by or delivered to the person so receiving the firearm is not otherwise prohibited by the Act or this part.

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. The nonlicensee shall attach to such record a true copy of any permit or other information required pursuant to any statute of the State and published ordinance applicable to the locality in which he resides. The licensee shall prior to shipment or delivery of the firearm, forward by registered or certified mail (return receipt requested) a copy of the record, Form 4473, to the chief law enforcement officer named on such record, and delay shipment or delivery of the firearm for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the record to such chief law enforcement officer, or the return of the copy of the record to him due to the refusal of such chief law enforcement officer to accept same in accordance with U.S. Post Office Department regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the chief law enforcement officer shall be retained by the licensee as a part of the records required of him to be kept under the provisions of Subpart H of this part.

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and (a licensed collector may sell or deliver a rifle or shotgun which is a curio or relic), to a nonlicensed resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase a rifle or shotgun in a contiguous State, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale or delivery for sale, of the rifle or shotgun, complied with all the requirements of paragraph (b) of this section applicable to intrastate transactions occurring on other than the licensee's business premises.

(d) A licensed dealer may sell to any nonlicensee who is a resident of a State other than the State in which the licensed dealer's premises are located, and who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in the State in which the licensed dealer's premises are located, and whose rifle or shotgun has been lost or stolen or has become inoperative in the State in which the licensed dealer's premises are located, if the nonlicensee presents to the licensed dealer a sworn statement, in duplicate, (1) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in the State in which the licensed dealer's business premises are located, (2) setting forth the name and address of the organized rifle or shotgun match or contest, or the nature and location of the hunting, and the circumstances surrounding the firearm's loss or theft, or the reason why the firearm has become inoperative, and (3) identifying the chief law enforcement officer (sheriff, chief of police, or police precinct captain) of the locality in which the nonlicensee resides. Immediately upon delivery of the rifle or shotgun to the nonlicensee, the licensed dealer shall forward a copy of the sworn statement, by registered mail, to the chief law enforcement officer named by the nonlicensee. The licensee shall retain the original sworn statement, and evidence of delivery of the copy thereof to the chief law enforcement officer, as a part of the records required of him under Subpart H of this part.

§ 178.97 Loan or rental of firearms.

A licensee may loan or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: *Provided*, That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part. A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, the licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this temporary furnishing of firearms for use on premises on which such an activity is conducted.

§ 178.98 Sales or deliveries of destructive devices and certain firearms.

The sale or delivery by a licensee of any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, to any person other than another licensee who is licensed under this part to deal in such device or firearm, is prohibited unless the person to receive such device or firearm furnishes to the licensee a sworn statement, in triplicate, setting forth (a) the reasons why there is a reasonable necessity for such person to purchase or otherwise acquire the device or weapon, and (b) that such person's receipt or possession of the device or weapon would be consistent with public safety. Such sworn statement shall be attached to the application to transfer and register the firearm required by Part 179 of this chapter. The sale or delivery of the device or weapon shall not be made until the application for transfer is approved by the Director and returned to the licensee (transferor) as provided in Part 179 of this chapter.

§ 178.99 Certain prohibited sales or deliveries.

(a) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver any firearm to any person not licensed under this part, or the Federal Firearms Act, and who the licensee knows or has reasonable cause to believe does not reside in (or if a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business or activity is located: *Provided*, That the foregoing provisions of this paragraph (1) shall not apply to the sale or delivery of a rifle or shotgun (curio or relic, in the case of a licensed collector) to a resident of a State contiguous to the State in which the licensee's place of business or collection premises is located if the requirements of § 178.96(c) are fully met, (2) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost

or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if the requirements of § 178.96(d) are fully met, and (3) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes (see § 178.97).

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver (1) any firearm or ammunition to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm, or ammunition, is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age, or (2) any firearm or ammunition to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the importer, manufacturer, dealer or collector knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance.

(c) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person (1) is except as provided under § 178.143, under indictment for, or, except as provided under § 178.144, has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954), or (4) has been adjudicated as a mental defective or has been committed to any mental institution.

§ 178.100 Record of transactions.

Every licensee shall maintain firearms and ammunition records in such form and manner as is prescribed by Subpart H of this part.

Subpart G—Importation

§ 178.111 General.

(a) Section 922(a)(3) of the Act makes it unlawful, with certain exceptions not pertinate here, for any person other than a licensee, to transport into or receive in the State where he resides any firearm purchased or otherwise obtained by him outside of that State. However, section 925(a)(4) provides a limited exception for the transportation, shipment, receipt or importation of certain firearms and ammunition by certain members of the United States armed forces. Section 922(1) of the Act makes it unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition except as provided by section 925(d) of the Act, which section provides stafidards for importing or bringing firearms or ammunition into the United States. Accordingly, no firearm or ammunition may be imported or brought into the United States except as provided by this part.

(b) Where a firearm or ammunition is imported and the authorization for importation required by this subpart has not been obtained by the person importing same, such person shall:

(1) Store, at his expense, such firearm or ammunition at a facility designated by U.S. Customs or the Assistant Regional Commissioner to await the issuance of the required authorization or other disposition; or

(2) Abandon such firearm or ammunition to the U.S. Government; or

(3) Export such firearm or ammunition.

(c) Any inquiry relative to the provisions or procedures under this subpart, other than that pertaining to the payment of customs duties or the release from Customs custody of firearms or ammunition authorized by the Director to be imported, shall be directed to the Assistant Regional Commissioner for reply.

§ 178.112 Importation by a licensed importer.

(a) No firearm or ammunition shall be imported or brought into the United States by a licensed importer (as defined in § 178.11) unless the Director has authorized the importation of the firearm or ammunition, or the firearm or ammunition is listed on the Importation List compiled by the Director as provided by paragraph (c) of this section.

(b) An application for a permit, Form 6 (Firearms), to import or bring a firearm or ammunition into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain (1) the name, address, and license number of the importer, (2) a description of the firearm or ammunition to be imported, including type (e.g.: rifle, shotgun, pistol, revolver), model, caliber, size or gauge, barrel length (if a firearm), country of manufacture, and name of the manufacturer, (3) the unit cost of the firearm to be imported, (4) the country from which to be imported, (5) the name and address of the foreign seller and the foreign shipper, (6) verification that if a firearm, it will be identified as required by this part, and (7) (i) if imported or brought in for scientific or research purposes, a statement describing such purposes, or (ii) if for use in connection with competition or training pursuant to chapter 401 of title 10, U.S.C., a statement describing such intended use, or (iii) if an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece, or (iv) if a firearm, other than a surplus military firearm, of a type that does not fall within the definition of a firearm by section 5845(a) of the Internal Revenue Code of 1954, and is for sporting purposes, an explanation of why the applicant believes the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes, or (v) if ammunition being imported for sporting purposes, a statement why the applicant believes it is generally recognized as particularly suitable for or readily adaptable to sporting purposes. In determining whether a firearm or ammunition is particularly suitable for or readily adaptable to sporting purposes, the Director may seek the recommendation of the advisory board authorized by paragraph (c) of this section. If the Director approves the application, such approved application shall serve as the permit to import the firearms or ammunition described therein, and importation of such firearms or ammunition may continue to be made by the licensed importer under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the licensed importer shall be notified of the basis for the disapproval.

(c) The Director may compile an Importation List of firearms and ammunition which he determines to be generally recognized as particularly suitable for or readily adaptable to sporting purposes. The determination of the Director that a firearm or ammunition is generally recognized to be particularly suitable for or readily adaptable to sporting purposes may be made with the assistance of an advisory board to be appointed by the Commissioner. Such board may be composed of persons from within and without governmental agencies who are recognized as being particularly knowledgeable in the use and classification of firearms and ammunition. No firearm shall be placed on the Importation List unless it is found that (1) the caliber or gauge of the firearm is suitable for use in a recognized shooting sport, (2) the type of firearm is generally recognized as particularly suitable for or readily adaptable to such use, and (3) the use of the firearm in a recognized shooting sport will not endanger the person using it due to deterioration through such use or because of inferior workmanship, materials or design. No ammunition shall be placed on the Importation List unless it is found that (i) the caliber, size or gauge of the ammunition is suitable for use in a recognized shooting sport, (ii) the type of ammunition is generally recognized as particularly suitable for or readily adaptable to such use, and (iii) the use of the ammunition in a recognized shooting sport will not endanger the person using it.

(d) A firearm or ammunition imported or brought into the United States by a licensed importer may be released from Customs custody to the licensed importer upon his showing that he has obtained a permit from the Director for the importation of the firearm or ammunition to be released, or that the firearm or ammunition appears on the Importation List. In obtaining the release from Customs custody of a firearm or ammunition authorized by this section to be imported through use of a permit or because the firearm or ammunition appears on the Importation List, the licensed importer shall prepare Form 6A (Firearms), in duplicate, and furnish the original Form 6A (Firearms) to the Cus-

toms officer releasing the firearm or ammunition. The Customs officer shall, after certification, forward the Form 6A (Firearms) to the Assistant Regional Commissioner for the region wherein the licensed importer maintains his place of business. The Form 6A (Firearms) shall show the name, address, and license number of the importer, the name of the manufacturer of the firearm or ammunition, the country of manufacture, the type, model, and caliber, size or gauge, and the number of firearms or rounds of ammunition released.

(e) Within 15 days of the date of release from Customs custody, the licensed importer shall (1) forward to the Assistant Regional Commissioner a copy of Form 6A (Firearms) on which shall be reported any error or discrepancy appearing on the Form 6A (Firearms) certified by Customs, (2) pursuant to § 178.92, place all required identification data on each imported firearm if same did not bear such identification data at the time of its release from Customs custody, and (3) post in the records required to be maintained by him under Subpart H of this part, all required information regarding the importation.

§ 178.113 Importation by other licensees.

(a) No person other than a licensed importer (as defined in § 178.11) shall engage in the business of importing firearms or ammunition. Therefore, no firearm or ammunition shall be imported or brought into the United States or a possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm or ammunition.

(b) An application for a permit, Form 6 (Firearms), to import or bring a firearm or ammunition into the United States or a possession thereof by a licensee, other than a licensed importer, shall be filed, in triplicate, with the Director. The application shall contain (1) the name, address, and the license number of the applicant, (2) a description of the firearm or ammunition to be imported, including type (e.g.: rifle, shotgun, pistol, revolver), model, caliber, size or gauge, barrel length (if a firearm), country of manufacture, and name of the manufacturer, (3) the unit cost of the firearm or ammunition to be imported, (4) the name and address of the foreign seller and the foreign shipper, (5) the country from which the firearm or ammunition is to be imported, and (6) (i) if the firearm or ammunition is being imported or brought in for scientific or research purposes, a statement describing such purposes, or (ii) if for use in connection with competition or training pursuant to chapter 401 of title 10, U.S.C., a statement describing such intended use, or (iii) if an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece, or (iv) if a firearm, other than a surplus military firearm, of a type that does not fall within the definition of a firearm under 5845(a) of the Internal Revenue Code of 1954, and is for sporting purposes, an explanation of why the applicant believes the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes, or (v) if ammunition being imported for sporting purposes, a statement why the applicant believes it is generally recognized as particularly suitable for or readily adaptable to sporting purposes. If the Director approves the application, such approved application shall serve as the permit to import the firearm or ammunition described therein. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

* * *

* * *

Subpart H—Records

§ 178.121 General.

(a) The records pertaining to firearms transactions prescribed by this part shall be in permanent form, and shall be retained on the licensed premises in the manner prescribed by this subpart. The records pertaining to ammunition prescribed by this part shall be retained on the licensed premises in the manner prescribed by § 178.125.

(b) Internal revenue officers may enter the premises of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 178.23). Section 923(g) of the Act requires licensed importers, licensed manufacturers, licensed dealers, and licensed collectors to make such records available for such examination or inspection at all reasonable times.

(c) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of firearms and ammunition as the regulations contained in this part prescribe. Section 922(m) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain any such record.

§ 178.122 Records maintained by importers.

(a) Each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacture, and the serial number of each firearm he imports or otherwise acquires, and the date such importation or other acquisition was made. Each licensed importer shall, within 15 days of the date of release from Customs custody or other acquisition, record the type, caliber, size or gauge manufacturer, and country of manufacture of the ammunition he imports or otherwise acquires, and the date such importation or other acquisition was made.

(b) A record of firearms and a separate record of ammunition disposed of by a licensed importer to another licensee shall be maintained by the licensed importer on his licensed premises and shall show the quantity, type, manufacturer, country of manufacture, caliber, size or gauge, serial number (in the case of firearms only), of the firearms or ammunition so transferred, the name, address, and license number of the licensee to whom the firearms or ammunition were transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the following format:

Quantity	Type	Manufacturer	Country of manufacture	Caliber, size or gauge	Model	Serial No.	Name, address, and license No. of licensee to whom transferred	Date of the transaction

(c) Notwithstanding the provisions of paragraph (b) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed importer to record his disposal of firearms and ammunition when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and

shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the Assistant Regional Commissioner.

(d) Each licensed importer shall maintain separate records of the sales or other dispositions made of firearms and ammunition to nonlicensees. Such records shall be maintained in the form and manner as prescribed by § 178.125 in regard to ammunition transactions, and by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

§ 178.123 Records maintained by manufacturers.

(a) Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm he manufactures or otherwise acquires, and the date such manufacture or other acquisition was made. Each licensed manufacturer shall record the type, caliber, size or gauge of the ammunition he manufactures or otherwise acquires. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

(b) A record of firearms and a separate record of ammunition disposed of by a licensed manufacturer to another licensee shall be maintained by the licensed manufacturer on his licensed premises and shall show the quantity, type, caliber, size or gauge, serial number (in the case of firearms only), of the firearms or ammunition so transferred, the name, address, and license number of the licensee to whom the firearms or ammunition were transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the format prescribed by § 178.122 except that the name of the manufacturer and the country of manufacture need not be recorded if the firearm or ammunition is of the manufacturer's own manufacture.

(c) Notwithstanding the provisions of paragraph (b) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed manufacturer to record his disposal of firearms and ammunition when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the Assistant Regional Commissioner.

(d) Each licensed manufacturer shall maintain separate records of the sales or other dispositions made of firearms and ammunition to nonlicensees. Such records shall be maintained in the form and manner as prescribed by § 178.125 in regard to ammunition transactions, and by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

§ 178.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, and a licensed collector shall not sell or otherwise dispose of any curio or relic to any person, other than another licensee, unless he records the transaction on a firearms transaction record, Form 4473: *Provided*, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of his permanent records, each Form 4473 he obtains in the course of transferring custody of his firearms.

(c) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee maintains his business or collection premises, the licensed importer, licensed manufacturer, licensed dealer, or licensed collector so

transferring the firearm shall obtain a Form 4473 from the transferee showing the name, address, date and place of birth, height, weight, and race of the transferee, and certification by the transferee that he is not prohibited by the Act or Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 236; 18 U.S.C. Appendix) from receiving a firearm in interstate or foreign commerce. The licensee shall identify the firearm to be transferred by listing in the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. Before transferring the firearm described in the Form 4473, the licensee (1) shall cause the transferee to identify himself in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the form the method used, and (2) if satisfied that the transferee is lawfully entitled to receive the firearm, shall sign and date the form.

(d) Prior to making an over-the-counter transfer of a shotgun or rifle to a nonlicensee who is not a resident of the State in which the licensee maintains his business or collection premises, and such nonlicensee is acquiring the shotgun or rifle under the provisions contained in § 178.96(d), the licensed dealer so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section. In addition, the sworn statement requirements imposed upon the transferee and the licensee by § 178.96(d) also shall be fully met.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee maintains his business or collection premises, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, licensed dealer, or licensed collector so furnishing the firearm, and such transferee, shall comply with the requirements of paragraph (c) of this section.

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, by a transferee who (1) is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, and who is a resident of the State in which the licensee maintains his business or collection premises, or (2) is purchasing or otherwise acquiring a shotgun or rifle, and who is a resident of a State contiguous to the State in which the licensee maintains his business or collection premises. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing that, in case the firearm to be transferred is a firearm other than a shotgun or rifle, he is 21 years or more of age; that, in case the firearm to be transferred is a shotgun or rifle, he is 18 years or more of age; that he is not prohibited by the provisions of the Act from receiving a firearm in interstate or foreign commerce; and that his receipt of the firearm would not be in violation of any statute of the State and published ordinance applicable to the locality in which he resides. Upon receipt of such Forms 4473, the licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the chief law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such chief law enforcement officer, or the return of the copy of the Form 4473 to the licensee due to the refusal of such chief law enforcement officer to accept same in accordance with U.S. Post Office Department regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the chief law enforcement officer, shall be retained by the licensee as a part of the records required of him to be kept under this subpart.

(g) A licensee who sells or otherwise disposes of a firearm to a nonlicensee, who is other than an individual, shall obtain from the transferee the information required by this section from an individual authorized to act on behalf of the transferee. In addition, the licensee shall obtain from the individual acting on behalf of the transferee a written statement, executed under the penalties of perjury, that the firearm is being acquired for the use of and will be the property of the transferee, and showing the name and address of that transferee.

(h) The requirements of this section shall be in addition to any other record-keeping requirement contained in this part.

(i) A licensee may obtain, upon request, a supply of Form 4473 from any Assistant Regional Commissioner or any District Director.

§ 178.125 Record of receipt and disposition.

(a) Each licensed dealer shall maintain records of all ammunition he receives for the purposes of sale or distribution. Such record may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records he maintains, and be readily available for inspection. Such record shall (1) show the name of the manufacturer and the transferor, and the type, caliber or gauge, and quantity of the ammunition acquired in the transaction, and the date of such acquisition, and (2) be retained on the licensed premises of the dealer for a period of not less than two years following the date of the acquisition.

(b) Each licensed collector shall maintain records of all ammunition he acquires as curios or relics for his collection. Such record may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records he maintains, and be readily available for inspection. Such records shall show the information required by paragraph (a) of this section and be retained in the same manner.

(c) The sale or other disposition of ammunition, or of an ammunition curio or relic, shall, except as provided in paragraph (d) of this section, be recorded in a bound record at the time such transaction is made. The bound record entry shall show; (1) the date of the transaction, (2) the name of the manufacturer, the caliber, gauge or type of component, and the quantity of the ammunition transferred, (3) the name, address, and date of birth of the purchaser (transferee), and (4) the method used by the licensee to establish the identity of the purchaser (transferee). The bound record shall be maintained in chronological order by date of sale or disposition of the ammunition, and shall be retained on the licensed premises of the licensee for a period of not less than two years following the date of the sale or disposition of the ammunition recorded therein. The format required for the bound record is as follows:

Date	Manufacturer	Caliber, gauge, or type of component	Quantity	Name	Address	Date of birth	Mode of identification	
							Driver's license (#)	Other (specify)

(d) When a commercial record is made at the time of sale or other disposition of ammunition, or of an ammunition curio or relic, and such record contains all information required by the bound record prescribed by paragraph (c) of this section, the licensed dealer or licensed collector transferring the ammunition, or ammunition curio or relic, may, for a period not exceeding 7 days following the date of such transfer, delay making the required entry into such bound record: *Provided*, That the commercial record pertaining to the transfer is; (1) maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) is readily available for inspection on the licensed premises until such time as the required entry into the bound record is made.

(e) Each licensed dealer and each licensed collector shall on and after the effective date of this part enter into a permanent record each receipt and disposition of firearms or firearms curios or relics. In addition, before commencing or continuing firearms business or fire-

arms curio and relic collection, each licensed dealer and licensed collector shall inventory the firearms or firearms curios and relics possessed for such business or in such collection and shall record same in the record required by this paragraph: *Provided*, That when a licensed dealer or licensed collector has records maintained under the Federal Firearms Act which readily disclose his inventory of firearms or firearms curios and relics, such inventory need not be recorded in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a firearm by a licensed dealer, or of a firearm curio or relic by a licensed collector, shall, except as provided in paragraph (f) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type of action, and the caliber or gauge of the firearm or firearm curio or relic. The sale or other disposition of a firearm or of a firearm curio or relic shall be recorded by the licensed dealer or the licensed collector not later than seven days following the date of such transaction. When such disposition is made to a nonlicensee, the firearms transaction record, Form 4473, obtained by the licensed dealer or the licensed collector shall be retained, until the transaction is recorded, separate from his Form 4473 file and be readily available for inspection. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensed dealer or licensed collector, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm or firearm curio or relic, the name of the person to whom the firearm curio or relic is transferred, and the address or license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer or the licensed collector transferring the firearm or curio or relic serially numbers his Forms 4473 and files them numerically. The format required for the record of receipt and disposition of firearms or firearms curios and relics is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer and/or importer	Model	Serial No.	Type of action	Caliber and gauge	Date	From whom (name and address or name and license number)	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. of Forms 4473 filed numerically

(f) When a commercial record is held by a licensed dealer or licensed collector showing his acquisition of a firearm or firearm curio or relic, and such record contains all acquisition information required by the bound record prescribed by paragraph (e) of this section, the licensed dealer or licensed collector acquiring such firearm or curio or relic, may, for a period not exceeding seven days following the date of such acquisition, delay making the required entry into such bound record: *Provided*, That the commercial record is, until such time as the required entry into the bound record is made (1) maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) is readily available for inspection on the licensed premises: *Provided, further*, That when disposition is made of a firearm or firearm curio or relic not entered in the bound record under the provisions of this paragraph, the licensed dealer or licensed collector making such disposition shall enter all required acquisition information regarding the firearm or firearm curio or relic in the bound record at the time such transfer or disposition is made.

(g) Notwithstanding the provisions of paragraphs (c) and (e) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed dealer or a licensed collector to record his acquisition and disposal of firearms and ammunition, or curios and relics, when it is shown by the licensed dealer or the licensed collector that such alternate records will accurately and readily disclose the required information. A licensed dealer or licensed collector who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer or the licensed collector until approval in such regard is received from the Assistant Regional Commissioner.

(h) Each licensed importer and licensed manufacturer selling or otherwise disposing of firearms or ammunition to nonlicensees shall maintain such records of such transactions as are required of licensed dealers and licensed collectors by this section.

§ 178.126 Furnishing transaction information.

(a) Each licensee shall, when required by letter issued by the Assistant Regional Commissioner, and until notified to the contrary in writing by such officer, submit on Form 4483, Report of Firearms Transactions, for the periods and at the times specified in the letter issued by the Assistant Regional Commissioner, all record information required by this subpart, or such lesser record information as the Assistant Regional Commissioner in his letter may specify.

(b) The Assistant Regional Commissioner may authorize the information to be submitted in a manner other than that prescribed in paragraph (a) of this section when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this part. A licensee who proposes to use an alternate method of reporting shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate method of reporting and the need therefor. An alternate method of reporting shall not be employed by the licensee until approval in such regard is received from the Assistant Regional Commissioner.

§ 178.127 Discontinuance of business.

Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records prescribed by this subpart shall be delivered within 30 days following the business discontinuance to the Assistant Regional Commissioner for the internal revenue region in which the business was operated: *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Assistant Regional Commissioner may arrange for the delivery of the records required by this subpart to such authority.

Subpart I—Exemptions

§ 178.141 General.

The provisions of this part shall not apply with respect to:

(a) The transportation, shipment, receipt, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(b) The shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, U.S.C., and the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(c) The shipment, unless otherwise prohibited by the Act or any other Federal law, by a licensed importer, licensed manufacturer, or licensed dealer to a member of the U.S. Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members of the U.S. Armed Forces, and such members or clubs may receive a firearm or ammunition determined by the Director to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or

club. Before making a shipment of firearms or ammunition under the provisions of this paragraph, a licensed importer, licensed manufacturer, or licensed dealer may submit a written request, in duplicate, to the Director for a determination by the Director whether such shipment would constitute a violation of the Act or any other Federal law, or whether the firearm or ammunition is considered by the Director to be generally recognized as particularly suitable for sporting purposes.

(d) The transportation, shipment, receipt, or importation of any antique firearm.

§ 178.142 Effect of Presidential pardon.

A pardon granted by the President of the United States regarding a conviction for a crime punishable by imprisonment for a term exceeding 1 year shall remove any disability which otherwise would be imposed by the provisions of this part in respect to that conviction.

§ 178.143 Relief from disabilities incurred by indictment.

A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding 1 year may, notwithstanding any other provision of the Act, continue operations pursuant to his existing license during the term of such indictment and until any conviction pursuant to the indictment becomes final: *Provided*, That if the term of the license expires during the period between the date of the indictment and the date the conviction thereunder becomes final, such importer, manufacturer, dealer, or collector must file a timely application for the renewal of his license in order to continue operations. Such application shall show that the applicant is under indictment for a crime punishable by imprisonment for a term exceeding 1 year.

§ 178.144 Relief from disabilities incurred by conviction.

(a) Any person may make application for relief from the disabilities under Federal law incurred by reason of a conviction of a crime punishable by imprisonment for a term exceeding 1 year if such conviction was not of a crime involving the use of a firearm or other weapon or a violation of the Act or the National Firearms Act.

(b) An application for such relief shall be addressed to the Commissioner and shall include such supporting data as the applicant deems appropriate. In the case of a corporation, the supporting data should include information as to the absence of culpability in the offense of which the corporation was convicted, or of any person having the power to direct or control the management of the corporation, if such be the fact. The application shall be filed, in triplicate, with the Assistant Regional Commissioner for the internal revenue region wherein the applicant resides.

(c) The Commissioner may grant relief to an applicant if it is established to the satisfaction of the Commissioner that the circumstances regarding the conviction, and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(d) Whenever the Commissioner grants relief to any person pursuant to this section, he shall promptly publish in the FEDERAL REGISTER notice of such action, together with the reasons therefor.

(e) A person who has been granted relief under this section shall be relieved of any disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction.

(f) (1) A licensee who is convicted of a crime punishable by imprisonment for a term exceeding 1 year during the term of a current license or while he has pending a license renewal application, and who qualifies under this section to file an application for removal of disabilities resulting from such conviction, shall not be barred from licensed operations for 30 days after the date upon which his conviction becomes final, and if he files his application for relief as provided by this section within such 30-day period, he may further continue licensed operations during the pendency of his application. A licensee who is not qualified under this section to file an application for relief or, if so qualified, does not file such application within 30 days from the date his conviction becomes final shall not continue licensed operations beyond 30 days from the date his conviction becomes final.

(2) In the event the term of a license of a person qualified to seek relief under this section expires during the 30-day period following the date upon which his conviction becomes final or during the pendency of his application for relief, he must file a timely application for renewal of his license in order to continue licensed operations. Such license application shall show that the applicant has been convicted of a crime punishable by imprisonment for a term exceeding 1 year.

(3) A licensee shall not continue licensed operations beyond 30 days following the date the Commissioner issues notification that the licensee's application for removal of disabilities resulting from a conviction has been denied.

(4) When as provided in this section a licensee may no longer continue licensed operations, any application for renewal of license filed by the licensee during the term of his indictment or the pendency of his application for removal of disabilities resulting from such conviction, shall be denied by the Assistant Regional Commissioner.

§ 178.145 Research organizations.

The provisions of this part with respect to the sale or delivery of destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles shall not apply to the sale or delivery of such devices and weapons to any research organization designated by the Director to receive same. A research organization desiring such designation shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and address of the research organization, the names and addresses of the persons directing or controlling, directly or indirectly, the policies and management of such organization, the nature and purpose of the research being conducted, a description of the devices and weapons to be received, and the identity of the person or persons from whom such devices and weapons are to be received.

§ 178.146 Deliveries by mail to certain persons.

The provisions of this part shall not be construed as prohibiting a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of title 18, U.S.C., is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duties.

§ 178.147 Repair of firearm.

A person not otherwise prohibited by Federal, State or local law may ship a firearm to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing, and notwithstanding any other provision of this part, the licensed importer, licensed manufacturer, or licensed dealer may return in interstate or foreign commerce to that person the repaired firearm or a replacement firearm of the same kind and type.

§ 178.148 Ammunition loading for personal use.

The licensing provisions of this part shall not apply to any person who engages only in hand loading, reloading, or custom loading ammunition for his own firearm, and who does not hand load, reload, or custom load ammunition for others.

Subpart J—Penalties, Seizures, and Forfeitures

§ 178.161 False statement or representation.

Any person who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person engaged in firearms or ammunition business, or in applying for any license, exemption, or relief from disability, under the provisions of the Act, shall be fined not more than $5,000 or imprisonment not more than 5 years, or both.

§ 178.162 Transportation or receipt to commit a crime.

Any person who ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce with intent to commit therewith an offense punishable by imprisonment for a term exceeding 1 year, or with knowledge and reasonable cause to believe that an offense punishable by imprisonment for a term exceeding 1 year is to be com-

mitted therewith, shall be fined not more than $10,000, or imprisoned not more than 10 years, or both.

§ 178.163 Commission of a Federal crime.

Any person who uses a firearm to commit any felony which may be prosecuted in a court of the United States, or carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than 1 year nor more than 10 years. In the case of a person's second or subsequent conviction under this section, such person shall be sentenced to a term of imprisonment for not less than 5 years nor more than 25 years, and notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

§ 178.164 Receipt, etc., of firearms by certain persons.

Any person who (a) has been convicted of a felony, (b) has been discharged from the Armed Forces under dishonorable conditions, (c) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, (d) having been a citizen of the United States has renounced his citizenship, or (e) being an alien is illegally or unlawfully in the United States, who receives, possesses, or transports in commerce or affecting commerce, any firearm shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both: *Provided, however,* That the provisions of this section shall not apply to any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison, or to any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

§ 178.165 Receipt, etc., of firearms by certain employees.

Any individual who to his knowledge and while being employed by any person who (a) has been convicted of a felony, (b) has been discharged from the Armed Forces under dishonorable conditions, (c) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, (d) having been a citizen of the United States has renounced his citizenship, or (e) being an alien is illegally or unlawfully in the United States, and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, any firearm shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both: *Provided, however,* That the provisions of this section shall not apply to an employee employed by a person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

§ 178.166 Seizure and forfeiture.

Any firearm or ammunition involved in, or used or intended to be used in, any violation of the provisions of the Act or of this part, or in violation of any other criminal law of the United States, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act.

Subpart K—Exportation

§ 178.171 Exportation.

Firearms and ammunition shall be exported in accordance with the applicable provisions of section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting firearms and ammunition shall maintain records showing the manufacture or acquisition of the firearms and ammunition as required by this part and records showing the name and address of the foreign consignee of the firearms and ammunition and the date the firearms and ammunition were exported.

AFFIDAVIT OF LEWIS GENE FREEMAN

SUPREME COURT OF THE UNITED STATES

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA et al.,

STATE OF INDIANA: COUNTY OF HOWARD)ss.:

LEWIS GENE FREEMAN, being duly sworn deposes and says:

1. I am LEWIS GENE FREEMAN, the petitioner in the above entitled case.

2. Since the commencement of this lawsuit, I have discussed the possibility of purchasing arms such as an M - 1 carbine from persons known to me to be licensed dealers in firearms under federal law. These dealers have all statedto me that they would not sell or otherwise transfer to me any such

arms unless I would sign Form 4473, entitled "Firearms Transaction Record" promulgated by the Department of Treasury, for the purpose of the record-keeping by said dealers for inspection by agents of the Treasury Department.

Lewis Gene Freeman

LEWIS GENE FREEMAN

Sworn To Before Me
This 24th Day of May, 1974

Raymond L. Young

Notary Public, State of Indiana
My Commission Expires
August 21, 1977.

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I – INTRA-STATE OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION NO.

NOTE: Please read and carefully follow instructions on reverse. Prepare an original only.

SECTION A – TO BE COMPLETED BY TRANSFEREE OR BUYER

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle) (Mr., Mrs., Miss.)*	2. HEIGHT	3. WEIGHT	4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, State, Zip Code)*	6. DATE OF BIRTH	7. PLACE OF BIRTH

8. CERTIFICATION OF TRANSFEREE *(Buyer)* – An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?		d. Are you an unlawful user of, or addicted to, marihuana, or a depressant, stimulant, or narcotic drug?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year.)		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
a. Are you a fugitive from justice?		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE	DATE

SECTION B – TO BE COMPLETED BY TRANSFEROR OR SELLER

THE PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's License, etc.)*	10. NUMBER ON IDENTIFICATION

On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.

11. TYPE *(Pistol, rifle, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.

15. MANUFACTURER *(and importer, if any)*

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller) (Hand stamp may be used)*	17. FEDERAL FIREARMS LICENSE NO.

18. TRANSFEROR'S *(Seller's)* SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DATE

NOTICE:

Under 18 U.S.C. Chapter 44 and Title VII of Public Law 90-351, 18 U.S.C. Appendix 1201-1203, as amended, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under Chapter 44 may determine if he may lawfully sell or otherwise dispose of a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms.

DEFINITIONS

1. *Intra-State Over-the-Counter Transaction.* The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), who is a resident of the State in which the transferor's business is located, occurring on the transferor's business premises.

2. *Published Ordinances.* The publication containing those State laws and local ordinances relevant to the enforcement of Chapter 44 of Title 18, U.S.C., which is annually published in the Federal Register and distributed to each Federal firearms licensee by the Director, Bureau of Alcohol, Tobacco and Firearms.

INSTRUCTIONS

1. Only one ATF Form 4473, Part I, is required for each intra-State over-the-counter transaction.

2. All signatures required on this form must be in ink. All other entries on the form must be in ink or be typewritten.

3. The transferee (buyer) of a firearm will, in every instance, complete Section A of the form and certify (sign) that the answers are true and correct.

4. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will execute the certification in Section A of the form and attach a written statement, executed under the penalty of perjury, stating:

   (a) that the firearm is being acquired for the use of and will be the property of that business entity, and

   (b) the name and address of that business entity.

5. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

6. If more than one firearm is involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper, which must be attached to this form covering the transaction.

7. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of the Gun Control Act of 1968 (U.S.C., Title 18, Chapter 44) and Title VII, Unlawful Possession or Receipt of Firearms, (82 Stat. 197), and Part 178, Commerce in Firearms and Certain Ammunition, Title 26, Code of Federal Regulations.

8. Upon completion of the firearm transaction, the transferor (seller) must make a part of his permanent firearms records the form recording that transaction and any supporting documents. Forms 4473, Part I, and any supporting documents must be filed either chronologically by date of transaction, alphabetically by name of transferee (buyer), or numerically by transaction number if the transferor assigns transaction numbers to the forms.

MAGAZINES

Army Seizes United States In 'Esquire' Plot

THE SUSPENSE NOVEL *Seven Days in May* sounded a warning not an alarm hypothesizing what could happen if the armed forces of the U.S. staged a coup d'etat. Milton Viorst in *Esquire*, using far less dramatic license and employing a minimum of troops and props, nevertheless conjures up an even more perilous script in his article, "General, I'm Ordering You to Seize the United States." Far too serious to be considered titillating, Viorst seems to be setting up situations which would mystify soldiers. For instance, he believes that if an Army officer was asked about the loyalty of the military establishment to the nation, the professional soldier would become irritated and say, "Don't give me any of that *Seven Days in May* crap." But Viorst builds on *Seven Days* and tightens the noose even more by thinking aloud what could happen if the takeover not a military coup but a "legal" takeover since it would be ordered by the President as Commander-in-Chief. It might also come as a surprise to many in the service but just such a scenario, according to Viorst, is being asked "in officers messes everywhere. They're asking one another with increasing frequency these days how the armed forces would respond to a fix like that — and no one seems to know the answer." Assuming he's partially correct, he then goes on to discuss both the legal and the moral aspects of such a dilemma. From the Army's JAG, Maj. Gen. George S. Prugh he got two viewpoints: an illegal order *must* be disobeyed but the courts have held that such disobedience does not excuse the disobedience of a lawful order. Since few soldiers hold law degrees the answer seems to lie with the individual. The author also creates a situation where the President informs the 82d Abn Div CG the Russians are mobilizing. He then orders the troops to occupy the Capitol and seize the networks and 10 opposition newspapers. Viorst went to West Point with this scenario, located a colonel for the response he was seeking, and he got one. Such a presidential order might lead to some soul searching and uneasiness up and down the line, the colonel replied, but in the end the order would be carried out. "It would be a matter for his (each soldier's) conscience, and I'd pity the poor bastard. But I wish you'd stop giving me that *Seven Days in May* crap."

The January-February issue of *Infantry* is dedicated to the NCO — the Army's backbone. The articles pay tribute to the NCOs as a special breed and a leader of men who will always find a way to accomplish any mission under any circumstance regardless of the odds. Another *Infantry* feature deals with infantry training.

GEORGE MARKER

Winner of 1970 New York State Broadcasters Association award for outstanding editorial
Winner of 1971 New York State Broadcasters Association award for outstanding editorial
Winner of 1973 New York State Broadcasters Association award for outstanding editorial

GUN CONTROL

WPIX EDITORIAL #658
JANUARY 3, 1974

For the past ten years, through a shocking list of murders and assassinations, our country has talked about gun control, but nothing has been done, and there are no uniform laws to deal with firearms.

There are very few issues which cause such hot debate. To the people who support strict controls, the facts reported in a Cleveland, Ohio study on the subject, showing that a gun bought for family protection was six times more likely to kill a family member or friend than an intruder, indicate that hand guns, if not all firearms, should be banned.

The other side, however, answers with equal intensity. While some of the people who speak against gun control reduce the debate to a simplistic "If you outlaw guns, only outlaws will have guns," there is a Constitutional argument which must be taken seriously. The Constitution does speak of the right to bear arms, and any change in that document should be made with the greatest care, by Amendment, and not by Congressional resolution or legislation. The suggestion that an erosion of one Amendment in the Bill of Rights threatens all other amendments is something that thoughtful people must consider before succumbing to what appears to be a quick and easy solution to a vexing problem.

The Management of WPIX has considered this matter over a period of years, and has come to some conclusions. First, we believe that enforceable gun control legislation could be worse than the ill it hopes to cure, since, in the final analysis, it could require house-to-house searches, and that would most certainly constitute an invasion of everyone's privacy, which the Bill of Rights surely protects.

Second, we think that a more profitable approach would be to pass legislation which would mandate a twenty year sentence, without possibility of parole, for anyone convicted of using a gun in the furtherance of a crime.

We believe this is a proposal which everyone can support, whatever their feelings about Gun Control, and we think that the effort to solve the problem of guns should move behind this type of suggestion.

What's your opinion? We'd like to know.

93 a

X editorializes on a daily basis, discussing topics of importance to the Greater New York area. Editorials are researched, reviewed and approved by the Editorial Board and delivered on the air by WPIX Senior Vice President Richard N. Hughes. Time is made available for the presentation of opposing views. Send your comments to WPIX Editorials, 220 E. 42nd St., New York 10017

Gun Week
FIRST WEEKLY NEWSPAPER SERVING SHOOTERS AND COLLECTORS

PUBLICATION OFFICES 911 Vandemark Road Sidney, Ohio Mail Address P O Box 150 Sidney, Ohio 45365 Phone Area Code 513-492-4141

Freeman case to Supreme Court

By Jim Schneider
News Editor

"There's no doubt about it, we're going to the Supreme Court," Lewis Gene Freeman told Gun Week following the Seventh Circuit Court's decision in May upholding a lower court's dismissal of a suit filed by Freeman challenging the constitutionality of the Gun Control Act of 1968.

Freeman, who works full-time as an engineer for an auto manufacturing firm and runs a part-time gun dealership from his home in Kokomo, Ind., originally filed the suit in 1972 following a dispute with the Treasury's Bureau of Alcohol, Tobacco & Firearms over renewal of his firearms dealer's license.

He contends the Gun Control Act of 1968 violates his civil rights guaranteed by the First, Second, Ninth, and Tenth Amendments.

The Seventh Circuit Court declared, "we hold that the district court properly dismissed plaintiff's complaint for lack of subject matter jurisdiction."

* * *

A Six Months Subscription to Life Lines $5

A PATRIOTIC VOICE OF FREEDOM

LIFE LINES

Vol. 16 #37
March 29, 1974

LIFE LINE FOUNDATION, INC.
4330 North Central Expressway
DALLAS, TEXAS 75206

Not To ∧ Keep & *Not* ∧ Bear Arms

'The Second Amendment does not apply to private citizens...'
—U.S. Attorney's Office, Indianapolis

The U.S. government says that the "Second Amendment does not apply to private citizens as an individual right."

The assertion is found on page 13 of a government brief in answer to a pending lawsuit attacking the Gun Control Act of 1968.

Gun enthusiasts are closely watching the case, originally filed by Lewis Gene Freeman, a part time gun dealer in Kokomo, Ind. Freeman sued in 1972 to have the 1968 Federal Gun Control Act declared unconstitutional. He alleged the act violates the First, Second, Fourth, Fifth and Eighth Amendments. Freeman, bearing all costs himself and acting as his own lawyer (a mistake he later rectified), was turned down in Federal District Court in Indianapolis last June by Judge Cale J. Holder. Freeman appealed to the Seventh Circuit Court in Chicago, this time with the help of David Caplan, New York attorney and a member of the National Rifle Assn.

The government's Nov. 27, 1973 answer to the appeal contains the legally questionable assertion that the Second Amendment does not give Americans the right to keep and bear arms. This is where the case now stands. The government, specifically Asst. U.S. Attorney Richard Darst, attacks the right to keep and bear arms at the Second Amendment's jugular, *"A well-regulated militia,* being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

In short, the government says *militia* means the National Guard. Gun owners, now become lawyers themselves because their gun ownership rights are constantly under attack, disagree.

Why not, they say, ascertain what *militia* originally meant? Back in 1788, Virginia constitutionalist George Mason said in a debate in Richmond, "I ask who are the militia...they consist now of the whole people." Mason's philosophy, written into the Virginia Constitution, formed the rock-bed of the Bill of Rights of which the Second Amendment is now a targeted part of the government's case. In addition, most state constitutions make the meaning much clearer than does the Second Amendment.

Likely, *Freeman vs. United States of America* won't be decided for some time, due to time-consuming court procedures. Freeman, a full-time automotive tool maker, 1509 Pontiac Dr., in Kokomo, 46901, says "Mr. Caplan informs me it will cost two to three thousand dollars to appeal the case to the Supreme Court—money I do not have. If we win, the government will surely appeal the case to the Supreme Court." Appeals to help him financially have appeared in *Guns Magazine, Gun Week,*

(Please turn page)

AUG 15
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-11

LEWIS GENE FREEMAN,
Petitioner,
v.
UNITED STATES OF AMERICA AND THE SECRETARY OF THE TREASURY OF THE UNITED STATES,
Respondents.

Brief of the Citizens Committee for the Right to Keep and Bear Arms as Amicus Curiae in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS AS AMICUS CURIAE

DAVIS, WRIGHT, TODD,
RIESE & JONES
RICHARD A. DERHAM
Attorneys for Citizens Committee for Right to Keep and Bear Arms

Office and Post Office Address:
4200 Seattle-First National Bank Building
Seattle, Washington 98154

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

SUBJECT INDEX

Page

Interest of the Amicus 1

Opinions Below 3

Statement of the Case 3

Statement of Facts 4

Argument 5

I. There Exists a Pressing Public Interest Supporting Review of This Case 5

A. There Has Been No Definitive Interpretation of the Second Amendment 5

B. Lower Court Decisions Conflict With the Apparent Holding of This Trial Court in *United States v. Miller* 7

C. Legislative Efforts to Regulate the Right to Keep and Bear Arms Require Judicial Guidance Regarding the Limits of Any Legislative Remedy 8

II. A Philosophy of the Second Amendment 8

A. The Relationship of Arms to Political Freedom 9

B. The English Antecedents 11

C. The American Experience 13

D. The Right to Keep and Bear Arms Is An Individual Right 16

E. There is a Right of Self Defense Recognized by Law and Incorporated in the Second and Ninth Amendments to the U. S. Constitution 20

F. Evidence Will Sustain the Constitutional Right in the Instant Case 21

G. Permissible Limitations On the Right to Keep and Bear Arms 22

Page

III. It Has Been Argued That There Is No Infringement of the Right to Keep and Bear Arms in the Present Statute Since it "Merely" Requires Registration of Dealers and Reporting of Transactions 23

IV. This Case Is Appropriate for Decision. The Court Should Determine to Hear and Decide This Case 24

Conclusion 24

Appendices
Appendix I A-1
Appendix II A-4

TABLES OF AUTHORITY

Table of Cases

Adamson v. California, 332 U.S. 46 (1947) 9

Aymette v. State, 2 Humphr. (21 Tenn.) 154 (1840) 12, 23

Cody v. United States, 460 2d 34 (8th Cir.) *cert. denied*, 409 U.S. 1010 (1972) 7

Eckert v. Philadelphia, 477 F.2d 618 (3rd Cir.) *cert. denied*, 414 U.S. 839 (1973) 8, 16

Palko v. Conn., 302 U.S. 319 (1937) 6, 16

Presser v. Illinois, 116 U.S. 252 (1886) 5, 6, 17, 19

Robertson v. Baldwin, 165 U.S. 275 (1897) 9, 23

United States v. Cruikshank, 92 U.S. 542 (1876) 5, 6

United States v. Day, 476 F.2d 562 (6th Cir. 1972) 7

United States v. Decker, 446 F.2d 165 (5th Cir. 1971) 7

United States v. Miller, 307 U.S. 174 (1938) 5, 6, 7, 19, 22

United States v. Tot, 131 F.2d (3d Cir. 1942) 22, 23

United States v. Williams, 446 F.2d 486 (5th Cir. 1971) 7

Constitutional Provisions

Ind. Const. art XII, § 1 17

Mass. Const. of 1780, § 17 16

Page

N.C. Const. of 1776, § 17 16
Pa. Const. of 1776, § 13 16
Pa. Const. art XIII (1876) 20
Vt. Const. of 1779, § 15 16
U.S. Const. art. I, § 10(3) 18
U.S. Const. art. I, § 8 (15) 18
U.S. Const. art. I, § 8(16) 18
U.S. Const. amend. I 6
U.S. Const. amend. I-IX 18
U.S. Const. amend. II .....2, 3, 5, 6, 7, 8, 17, 18, *et seq.*
U.S. Const. amend. V 9
U.S. Const. amend. IX 20
U.S. Const. amend. XIV 6

Statutes

Public Law 90-618 (Gun Control Act of 1968) 3, 4
42 U.S.C. § 2122 23

Textbooks

31 Alb. L. Rev. 74 (1967) 7, 12, 14, 20
1 Blackstone, *Commentaries* 143 (14th Ed. 1803) 24-25
J. Story, *II Commentaries on the Constitution* 646 § 1897 (5th Ed. 1891) 10, 15
35 N.Y.U.L. Rev. 865 (1960) 17, 22
61 Nw. U. L. Rev. 46 (1966) 2, 12, 14

Other Authority

A. D. Little, Report to Department of the Army, 1966.... 22
1 Annals of Cong. 749 (1789) 19

Page

Aristotle, The Politics, (Penguin Books, Ed. T. D. Sinclair, Tr. 1962) 11

26 C.F.R. § 178.121(b) 4

26 C.F.R. § 178.127 4

C. Warren, Congress, *Constitution and the Supreme Court,* p. 85 9

D. Higginbotham, *The War of American Independence* 14

G. M. Trevelyan, *2 History of England* 269 Doubleday Anchor ed. 1952) 13

Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee of the Judiciary, U.S. Senate p. 63 21

Indiana Militia §§ 45-2001, 2002 17

J. Whisker, *Our Vanishing Freedom* (Heritage House Publishers, 1972) 11, 12

Magna Carta § 61 24

MacNeil, *The Rise of the West* (University of Chicago Press, 1963) 10

T. Cooley, *The General Principles of Constitutional Law,* 281 (1891, 2d ed.) 18

The Federalist Papers, No. 46 (Mentor Book ed. 1961) 13

I W & M, Sess. 2, c.2 § 9 11

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-11

LEWIS GENE FREEMAN,
Petitioner,
v.
UNITED STATES OF AMERICA AND THE SECRETARY OF THE TREASURY OF THE UNITED STATES,
Respondents.

Brief of the Citizens Committee for the Right to Keep and Bear Arms as Amicus Curiae in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF OF THE CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS AS AMICUS CURIAE

INTEREST OF THE AMICUS

The Citizens Committee for the right to keep and bear arms was incorporated in January 1974 as the successor of an unincorporated committee formed in 1971. The committee was originally formed and currently exists for the purpose of preserving the effectiveness of the Second Amendment to the United States Constitution and providing aid and information to people throughout the United States who share in that goal. The committee has a broad base of support with 41,000 members residing in

virtually every state of the union. The Honorary National Chairman is Mr. Arthur Godfrey and its National Advisory Council consists of numerous distinguished people including members of Congress, university professors, and citizens from many other walks of life.

The instant case raises an important, if not crucial, issue going ultimately to whether an act of Congress may, under any circumstances, be held invalid under the Second Amendment to the United States Constitution. Dismissal of the case at its outset can be sustained only if the Second Amendment grants no private rights and has, in fact, become an anachronistic embellishment of our Bill of Rights.

The Citizens Committee for the right to keep and bear arms asserts that the rights guaranteed by the Second Amendment to the United States Constitution are basic and fundamental rights possessed by the citizens of the United States. The Committee fully adopts the position of the Bar Association of Michigan:

> . . . the right to bear arms is a basic right. We believe that the right granted under the second amendment is one granted to the individual and not to the militia as an organization.

Resolution passed by the Michigan Bar Association, quoted in Feller and Getting, "The Second Amendment: A Second Look," 61 Nw. U. L. Rev. 46, at fn. 3 (1966).

The Committee engages in public discussion and debate concerning the extent and nature of the right to keep and bear arms, monitors and advises its members of legislative developments in the national and state legislatures, represents its members in presenting views to Congress on proposed legislation relating to the keeping and bearing of arms, and generally, serves as a major spokesman for the point

of view that the Second Amendment remains a vital part of the Bill of Rights. Therefore, the interest of Amicus Curiae herein is to oppose the lower court's misinterpretation of the Second Amendment of the Constitution which would, in effect, deny protection to individual rights arising under the Amendment. As a major organization active in this specialized area, Amicus believes it can contribute significantly to the court's understanding of these important issues.

The filing of this brief as Amicus Curiae has received the consent of both parties to the action.

OPINIONS BELOW

The opinion of the District Court for the Southern District of Indiana and the opinion of the Court of Appeals for the Seventh Circuit, contained in its "unpublished order" are printed in the appendix accompanying the Petition for Writ of Certiorari. Neither of the opinions below is reported.

STATEMENT OF THE CASE

Petitioner Lewis Gene Freeman, a private citizen, initially appearing *pro se,* filed the suit seeking a judgment declaring the unconstitutionality of the recordkeeping and inspection provision of the Gun Control Act of 1968 (Public Law 90-618) and related provisions of the Act purporting to prohibit interstate shipments and sales of arms from a federally licensed dealer to a nonlicensee. Related issues challenged regulations promulgated by the Secretary of the Treasury pursuant to the Act.

Although the initial complaint filed by Mr. Freeman was undoubtedly defective in the choice of parties defendant

as well as other matters, he timely filed a motion for leave to amend together with a proposed amended complaint which raised the constitutional issues in a procedurally proper manner. The trial court denied the motion to amend and granted defendants' motion to dismiss and the Court of Appeals affirmed on the stated ground that the claims of the petitioner were "frivolous" by which we must infer that they mean that there is no recognized constitutional right of citizenship relating to the keeping and bearing of arms.

STATEMENT OF FACTS

Under the provisions of the Gun Control Act of 1968, petitioner or any citizen wishing to purchase firearms must complete Department of the Treasury Form 4473 (set forth in full at p. 90(a) to Petitioner's appendix on file herein). That form provides physical identification of the purchaser and of the weapon purchased and then becomes a part of the permanent firearms record maintained by the seller. In the event of discontinuance of the seller's business, the forms are required to be delivered to the Assistant Regional Commissioner for the Internal Revenue Service in the appropriate region. 26 C.F.R. § 178.127. Such records are available to the Assistant Regional Commissioner for examination and inspection. 26 C.F.R. § 178.121(b). It is, of course, self evident that these records become a part of a government-controlled information retrieval system. Unfortunately, recent events have demonstrated that there can be no presumption that information available to the federal government will not be misused. The potential of a "chilling effect" upon the exercise of a right guaranteed by the Bill of Rights cannot be lightly dismissed.

Because of the disposition of this case at an early stage of the proceedings, there is no evidence in the record upon which the lower court or this court could gauge a proper balancing between the rights guaranteed by the Second Amendment and whatever relevant governmental interests are affected. Nor is there evidence in the record upon which this court could determine whether the weapons involved are those which fall within the protection of the Second Amendment (a weapon whose "use could contribute to the common defense," *United States v. Miller*, 307 U.S. 174 (1938)). Thus, numerous factual questions which may be necessary to a final adjudication of this case remain unanswered.

ARGUMENT

I. There Exists a Pressing Public Interest Supporting Review of This Case

A. *There Has Been No Definitive Interpretation of the Second Amendment*

Although the Bill of Rights is a fundamental part of our constitutional heritage, there have been few cases dealing with the Second Amendment and none which can be considered a definitive, or even binding, interpretation today. Our research has uncovered only three occasions in which the Supreme Court has construed the extent of the constitutional right to keep and bear arms as guaranteed by the Second Amendment.

In *United States v. Cruikshank*, 92 U.S. 542 (1876), and in *Presser v. Illinois*, 116 U.S. 252 (1886), the Supreme Court was faced with challenges to state statutes which were alleged to contravene the right to keep and bear arms. In dismissing the challenge and upholding the state laws,

the Court concluded that the Bill of Rights constituted a limitation on the power of Congress and the national government, but did not constitute a limitation upon the states. Since *United States v. Cruikshank* applied the same [illegible] to the First Amendment, it is clear that those cases can have no continuing vitality in light of the numerous Twentieth Century cases holding that the Fourteenth Amendment incorporates the Bill of Rights. *See, e.g., Palko v. Conn.*, 302 U.S. 319 (1937). Certain dicta appearing in the *Presser* decision is significant, for the Court there stated that:

> It is undoubtedly true that all citizens capable of bearing arms constitute the reserve military force or reserve militia of the United States as well as of the states....

116 U.S. at 265.

The only other decision which we have found by the United States Supreme Court dealing with the Second Amendment is *United States v. Miller*, 307 U.S. 174 (1938). Oddly, this case lacked the adversary nature of most cases in that only the United States filed briefs or argued the case before the United States Supreme Court. Miller did not appear. This case dealt with an act of Congress making it illegal to transport certain weapons, including a short-barreled shotgun, in interstate commerce without first registering them. The trial court sustained a demurrer and dismissed the indictment under the Second Amendment. The Supreme Court reversed and remanded because of the lack of an evidentiary hearing to support a finding that such a shotgun is "part of the ordinary military equipment or that its use could contribute to the common defense" or otherwise has a reasonable relationship to the preservation or efficiency of a well-regulated militia. 307 U.S. at

178. Thus, the Court did not interpret the Second Amendment and, lacking any party asserting the unconstitutionality of the statute, simply remanded for further proceedings. The extent to which the right may go beyond the dicta of *United States v. Miller* remains undetermined. The implication, however, is clear that if a relationship between the weapon regulated and the militia exists then the federal government cannot impose undue restrictions on possession and use (Note 31 Alb. L. Rev. 74, 78 (1967)).

B. *Lower Court Decisions Conflict With the Apparent Holding of This Court in* United States v. Miller

To the extent that *United States v. Miller* can be held to be authority today, it stands for the assertion that there must be a fact-finding hearing before the claim of constitutionality can be weighed. There must be an opportunity to introduce evidence establishing a relationship between the type of weapon possession of which is regulated and "the common defense".

A series of recent lower court decisions have dealt with Second Amendment claims. (*See* Appendix I for an analysis of each case.) Some have followed *United States v. Miller* and rejected Second Amendment claims where there was no evidence in the record supporting the claim (*e.g., United States v. Decker,* 446 F.2d 165 (5th Cir. 1971); *Cody v. United States,* 460 F.2d 34 (8th Cir.), *cert. denied* 409 U.S. 1010 (1972)). Other cases, however, read *United States v. Miller* as dispositive of the constitutional issue (*United States v. Williams,* 446 F.2d 486 (5th Cir. 1971)), and dismiss Second Amendment claims as "meritless" (*United States v. Day,* 476 F.2d 562 (6th Cir. 1973)), or "frivolous" (this case below), or by flatly rejecting claims

that the right to keep and bear arms is a right guaranteed by the United States Constitution (*Eckert v. Philadelphia*, 477 F.2d 618 (3d Cir.), *cert. denied*, 414 U.S. 839 (1973)).

At best these and the other cases discussed in Appendix I demonstrate the lack of any consistent guiding principle controlling lower court applications of the Second Amendment. At worst, as in this case below, by denying opportunity for an evidentiary hearing, the cases constitute a direct conflict with the only guiding decision by this Court.

C. *Legislative Efforts to Regulate the Right to Keep and Bear Arms Require Judicial Guidance Regarding the Limits of Any Legislative Remedy*

A wide range of legislation is presently under consideration in the legislatures of this land. Many states have pending before them at the present time or during their latest legislative session some proposal to regulate the purchase, sale or possession of firearms. Lacking any guidelines in the extent to which the legislatures may act to regulate or restrain the possession of firearms, legislatures may enact legislation which improperly infringes upon the constitutional rights of the citizens. Equally undesirable, they may refrain from enacting laws which would be sustained by this court and which are in the public interest, in the mistaken belief that such laws are unconstitutional. For these reasons, there are broad and important public reasons for the court to act in an appropriate case to define the scope of the Second Amendment of the Constitution.

II. A Philosophy of the Second Amendment

The first ten amendments to the Constitution have been expressed as the "essential portion of the Constitution" without which the Constitution itself would never have

been accepted by the American people. C. Warren, *Congress, Constitution and the Supreme Court*, at p. 85. The first ten amendments were prepared and adopted

> . . . largely because of fear that the Government might unduly interfere with prized individual liberties. . . .

Adamson v. California, 332 U.S. 46, 70 (1947) (Black J. dissenting). In retrospect, the rights guaranteed by other portions of the Bill of Rights, such as the right of freedom of speech and freedom of religion, the right to be secure against unreasonable searches and seizures, the comprehensive due process rights of the Fifth Amendment and related rights are admittedly fundamental rights, perceived as such by all Americans.

In fact, this court has long ago noted the fundamental nature of these rights and their evolution from English history:

> The law is perfectly well settled that the first ten amendments to the Constitution commonly known as the Bill of Rights were not intended to lay down any novel principle of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors. . . .

Robertson v. Baldwin, 165 U.S. 275, 281 (1897). Notwithstanding the unquestioned importance of the other provisions of the Bill of Rights, to many, the right to keep and bear arms seems an anomoly. The purpose of this portion of the brief will be to outline a philosophy of the amendment grounded in the history surrounding its adoption, and to demonstrate the continuing vitality of that philosophy.

A. *The Relationship of Arms to Political Freedom*

The right to keep and bear arms is, like the right of freedom of speech and freedom of the press, in its ultimate

sense a political right. It is a right concerned with power, the allocation of power, and restraints upon the abuse of power. It is a right the guarantee of which grew out of the founders' fear of a standing army, a fear based both upon their own recent past and upon the experiences of England under the Stuarts. It has been called

> the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers;

J. Story, *II Commentaries on the Constitution* 646 §1897 (5th Ed. 1891).

A study of world history demonstrates the close interrelationship between weaponry and the political balance which has existed at all times in human societies. One prominent historian, William MacNeil, weaves an examination of this theme through his history of the world, *The Rise of the West* (University of Chicago Press, 1963). As he notes, transition from labor-intensive armament systems to capital-intensive armament systems has invaribly been accompanied by a transfer of political power from a broad to a narrow base. Thus, the development of the chariot in the Second Millenium before Christ transferred military supremacy to the aristocracy which had the ability to invest capital in the construction of chariots, and, more expensively, the development and upkeep of powerful horses. MacNeil, *op. cit.* 104-05 Later, the discovery of steel smelting made possible the development of steel weapons by use of which the infantrymen could overcome the aristocratic charioteers. *Id.* at 117-18. As a result, there was a transfer of power from the hands of the few to the hands of the many. "The abundance of iron had democratized warfare, so that extensive aristocratic empires no longer accorded with military realities."

Id. at 125. The result in that time frame was increased political localism and a broadened egalitarian base. This thesis is not novel, having first been advanced by Aristotle, *Aristotle, The Politics,* pp. 248-49 (Penguin Books, Ed. T. D. Sinclair, Tr. 1962). See Appendix II for a further synopsis of the MacNeil thesis. It is no accident that democracy first became an accepted political theory in the days of the supremacy of the Greek hoplite and phalanx, nor that the great nation states of Eruope were built when the centralized military control was feasible.

B. *The English Antecedents*

Some authorities trace the development of the right to keep and bear arms back to the fyrd existing in England in pre-conquest times and continuing in modified form as a supplement to feudal military tenure. *See* J. Whisker, *Our Vanishing Freedom,* Heritage House Publishers (1972). From the early principle that it was the obligation of citizenship to participate in the defense of the realm gradually developed, along with the nascent democratic doctrines of parliamentary government, a concomitant feeling that there was a "right" to participate in military activities.

The political rights of Englishmen reached their testing ground during the turbulent Stuart dynasty and, by the end of that period, the recognition of a right to bear arms had clearly crystalized. When the new rulers, William and Mary, were called upon to issue the Bill of Rights of 1689, reasserting pre-existing rights of the English people, they provided:

> That the subjects which are protestants, may have arms for their defence suitable to their conditions and as allowed by law.
>
> I W & M Sess. c.2, § 9.

As the Tennessee court concluded in *Aymette v. State*, the provision intended that the citizenry "being armed they may as a body rise up to defend their just rights, and compel their rulers to respect the laws." 2 Humphr. (21 Tenn.) 154, 157 (1840).

What had occurred was that the Stuart Kings found their efforts to control Parliament frustrated by the existence of armed citizens, participants of "trained Bands," similar to the organized militia, which had been established under Elizabeth I. In fact, the struggle of Charles I to disband the "Trained Bands" by proclamation in 1642 was a significant element in the confrontation between the Long Parliament and the English monarchy. *See* Note: "The Right to Keep and Bear Arms; A Necessary Constitutional Guarantee or an Outmoded Provision of the Bill of Rights," 31 Alb. L. Rev. 74 (1967); Whisker, *op. cit.* at 2-4. After the Restoration, James II, by attempting to transform the standing army into a predominantly Catholic body again raised issues of the political nature of the right to keep arms, culminating in the Glorious Revolution of 1688 and the Bill of Rights. Feller & Getting, *op. cit. supra*, 48. The Tennessee Supreme Court summarized this episode as follows:

> The evil that was produced by disarming the people in the time of James II was that the king, by means of a standing army quartered among the people, was able to overawe them, and compel them to submit to the most arbitrary, cruel, and illegal measures. Whereas, if the people had retained their arms, they would have been able, by a just and proper resistance to those oppressive measures, either to have caused the king to respect their rights, or surrender (as he was eventually compelled to do) the government into other hands.

Aymette v. State, 2 Humphr. (21 Tenn.) 154, 157 (1840).

Another source has commented upon the ignominy in which Englishmen looked to a foreign king and a foreign navy to rescue their rights. G. M. Trevelyan, 2 *History of England* 269-70 (Doubleday Anchor ed. 1952).

C. *The American Experience*

What history teaches was recognized as well by the constitutional framers: if the government were accorded a monopoly of force, liberty could not long be secured. If military power were kept diffused, political power could not be centralized into tyranny. Speaking directly to that issue in the Federalist Papers, James Madison, writing as Publius, responded to fears that the federal government could establish a standing army which would trammel the rights of the people. He said:

> Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the Federal Government: still it would not be going too far to say that the state governments with the people on their side would be able to repel the danger. . . . To [the standing army] would be opposed a militia amounting to near half a million of citizens with arms in their hands . . . it may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms will be most inclined to deny the possibility of it. . . . Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms.

The Federalist Papers, No. 46, at p. 299 (Mentor Book Ed. 1961). His last observation bears repeating: an autocratic government dares not trust its citizens with arms. Thus to Madison the right to keep and bear arms was im-

plicit as part of the fundamental rights of citizenship and as an essential element of the checks on usurpations of power.

The colonial history of the country led the framers of the Constitution and of the Bill of Rights to be fully cognizant of the importance of an armed citizenry for the protection of the citizens against the government. Just as Englishmen had struggled for the right to keep and bear arms through the centuries, finally to see it secured through the confrontation with the Stuart Kings, the colonists too had had the question of control of arms pressed upon them in its direct relationship to their political rights. One of General Gage's early efforts was to deny gunpowder to the colonial militiamen. *See Suffolk Resolves* of Sept. 6, 1774, cited in Feller & Getting, *op. cit. supra,* fn. 11. The succeeding efforts of the English crown to seize control of the armaments and munitions stored by the Massachusetts Militia at Concord, was the proximate cause of the opening of military hostilities between the colonists and England, D. Higginbotham, *The War of American Independence,* p. 51, as was the confiscation of weapons of the inhabitants of Boston in 1775. *See* Note 31 Alb. L. Rev. 74 (1967). In the long military struggle which followed, it was undoubtedly only the fact that the Americans, unlike most popular revolutionary movements in modern times, began in possession of a large military capability that tilted the balance in favor of freedom. D. Higginbotham, *op. cit. supra* at 10.

It is natural that these men, anxious to secure the blessings of freedom to future generations, should insist upon the right to keep and bear arms as a means of shackling the central government. So long as citizens retained the

ability to resist, they believed, an oppressive government could not survive.

We might add that the very existence of the right to keep and bear arms undoubtedly serves as a strong deterrent against any inclination which a government may have toward oppression. Nor does the revolution in armaments in the last two centuries alter that deterrent. Our country's recent experience in Viet Nam has demonstrated the limits of power and demonstrated that large scale weapons are not effective to wipe out individual resistance. Closer to home, the unfortunate destruction of life and property in the core cities of our nation during the mid-1960's similarly illustrates that small handheld firearms are an effective means of protest, even rebellion, against a society which is seen to be oppressive. Such protests cannot be suppressed where there is widespread disaffection and can only be resolved by government policies which respond to legitimate grievances and thus isolate the disaffected members of society. The example is advanced to illustrate that the alternative of repression was *not* available to the government in the case of our urban crisis and that the government could not afford to adopt tactics which would alienate large groups. Were our government to become oppressive to any significant segment of the society, a disarmed populace would be helpless but an armed populace can, as Madison affirmed, rescue their rights from the hands of the oppressors. This, undoubtedly, is the "strong moral check" to which Mr. Story referred. (J. Story, *II Commentaries on the Constitution* 646 § 1897 (5th ed. 1891).)

D. *The Right to Keep and Bear Arms Is An Individual Right*

Dictum in early cases indicated that the adoption of the Second Amendment was not intended to confer or recognize a right of the individual but that it simply conferred an immunity from infringement by the federal government. Although that language would seem to have lost all force since decisions of this Court applying the Bill of Rights to the states, *see, e.g., Palko v. Conn.*, 302 U.S. 319 (1937), it is occasionally still quoted. *See Eckert v. Philadelphia*, 477 F.2d 610 (3d Cir. 1973).

That the right to keep and bear arms was perceived by the framers as an individual right should be clear from the prerevolutionary history of the right, and from its functional role in the political system. Moreover, it is strongly indicated from the fact that many of the original states provided for the right to keep and bear arms in their constitutions at the time that the Union was formed.[1] Clearly the framers were concerned about protecting the right from infringement at any level of government.

The language of the Amendment itself is clearly directed at preservation of the right of individuals. It is not now arguable that the phrase "the right of the people" imports some collective right in the people as a body rather than an individual right. Certainly that was not the contemporaneous interpretation of the framers of the First Amendment ("the right of the people peaceably to assemble") or the Fourth Amendment ("the right of the people to be secure . . ."). Mr. Justice Black has noted that the use of the

1. North Carolina Const. of 1776, § 17; Pennsylvania Const. of 1776, § 13; Virginia Const. of 1776, § 13; Vermont Const. of 1777, § 15; Massachusetts Const. of 1780, § 17.

words "the people" in other portions of the Bill of Rights strongly emphasizes the desire to protect individual liberty. H. Black, "The Bill of Rights," 35 N.Y.U. L. Rev. 865. 871 (1960).

Nor is the introductory phrase of the Second Amendment, "a well-regulated militia, being necessary to the security of a free State," properly read as language of limitation. To the framers of the Constitution, the militia does not refer solely to an organized body. This court has said:

> It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States as well as of the states. . . .

Presser v. Illinois, 116 U.S. 252, 265 (1886). The status of the unorganized militia is specifically recognized by the constitutions of many states. Plaintiff herein, for example, is a member of the militia of the State of Indiana pursuant to Article XII, Section 1 of the Constitution of that state. Since he is not enrolled in the militia, or what we would now call the National Guard, he is a member of the Sedentary Militia as defined by Article III of the Indiana Military Code (Indiana Militia, § 45-2001 and 2002). He, like all citizens, is available to defend the liberties of the country when needed and is entitled to prepare himself for that mission.

Had the Second Amendment been perceived of as solely a guarantee of the right of the states to preserve their own militia, the amendment surely would have been written in a different manner. The Constitution provides that Congress shall have power "to provide for organizing, arming and disciplining the militia," though the appointment

of officers and the authority of training the militia is reserved to the states. Article I, Section 8(16). The Congress reserves the right to provide for calling forth the militia to execute the laws of the Union. Article I, Section 8(15). And states are prohibited from maintaining troops in time of peace. Article I, Section 10(3). Had the intent of the Second Amendment been merely to insure that state governments retain control over their own militia to oppose the central government, the framers would surely have provided expressly for limitations upon the power of the central government over the state militia.

As the framers were well aware of the vulnerability of the organized militia to seizure by a central authority possessed with a standing army (the effort to seize the militia armaments and munitions at Concord stood forth as a clear warning) it is doubtful that they could have rested any faith in the efficacy of the Second Amendment to protect American liberties had they read it as limited solely to the organized militia of the states, which would be federalized as the first step of any oppressor. All of the language of Madison, of Story, of the framers of the Bill of Rights, indicates that the intent of the Second Amendment like the companion Amendments I through IX, was to secure individual liberties.

Hear Judge Cooley:

> The meaning of the provision undoubtedly is, that the people from whom the militia must be taken [that is, those who are capable of bearing arms to defend the country against foreign invaders or domestic tyrants] shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose. . . .

> T. Cooley, "The General Principles of Constitutional Law," 281-282 (1891, 2d ed.).

To the framers of the Constitution and its first Amendments, the militia consisted of every able-bodied white male physically able to participate in the common defense, whether or not "enrolled" (this definition was accepted in *United States v. Miller,* 307 U.S. 174, 179 (1938)). All were available, and under an obligation, to respond to serve the defense needs of the society. For example, the Militia Act of May 8, 1972 required the enlistment of every able-bodied white male between the ages of 18 and 44. Viewed as a universal obligation of citizenship, the militia was designed to defend this nation. And the right to keep and bear arms, therefore, was viewed as co-extensive with citizenship and not as limited to particular organized state bodies. *Presser v. Illinois,* 116 U.S. 252 (1886). Only relatively recently did the present distinction between an Organized Militia (now the National Guard) and the unorganized militia of all citizens develop.

In the very debate surrounding the adoption of the Second Amendment the point was recognized:

> Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins. This was actually done by Great Britain at the commencement of the late Revolution. They used every means in their power to prevent the establishment of an effective militia to the Eastward.
>
> Speech of Elbridge Gerry, 1 Annals of Cong. 749-50 (1789).

Yet the only protection against central government control over the militia is an individual right not easily susceptible to unnoticed or sudden abridgement.

E. *There is a Right of Self Defense Recognized by Law and Incorporated in the Second and Ninth Amendments to the U. S. Constitution*

Independent of the military application of the right to keep and bear arms, there is a recognized right to keep and bear arms for self defense. At the time of the adoption of the specific amendments of the Bill of Rights, there appears to have been some concern that the enumeration of certain rights might be construed to exclude other rights traditionally possessed in the Anglo-American system. To preclude that possibility, the Ninth Amendment was adopted, providing

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The right of the individual to use weapons in self defense is recognized in one form or another by the constitutions of 35 states (*see* Note, 31 Alb. L. Rev. 74, 80 (1967)), and generally by statutes elsewhere. For example, the Pennsylvania Bill of Rights adopted at that state's 1776 Constitutional Convention stated "that the people have a right to bear arms for the defense of *themselves* and the state. . . ." Pa. Const. Art. XIII (1776). That such a provision is so widespread is persuasive of its status as a recognized fundamental right of citizens. Implicit in the right to use a weapon is the right to possess it.

In these days of increasing crimes of violence, especially burglary and robbery, exercise of the right of self defense is the only recourse to many citizens.

F. *Evidence Will Sustain the Constitutional Right in the Instant Case*

Even if the opening clause of the Second Amendment is construed to limit the right to keep and bear arms to those arms the keeping of which and the proficiency in the use of which are pertinent to the military defense of the country from foreign invaders, rather than from domestic tyrants, evidence is substantial that our country's defense has been materially benefitted by the gunkeeping habits of our citizenry. For example, the Department of the Army has, since 1903, engaged in a program of loaning weapons to gunclubs and providing free ammunition. From 1959 to 1964 alone, ammunition costing $7 million was given to private gunclubs. In explaining this practice before the Senate Subcommittee to Investigate Juvenile Delinquency of the Committee of the Judiciary, the Secretary of the Army stated:

> The real justification for this program from the point of view of the Army, in my judgment, would lie right there. I think past studies have shown that, in Korea, something less than 50% of the riflemen in combat fired at anything. Men who have some talent as marksmen are more liable to shoot at something than men who do not. The range of the weapon is extended in the hands of a marksman. We have a great interest in this. We still depend on the rifleman and his being able to shoot his rifle well. *The fact that the recruit has been shooting squirrels as a boy enables him to be a better marksman when he comes into the army, and that is to our advantage.*

Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee of the Judiciary, U.S. Senate, p. 63, Testimony of Secretary of the Army, Steven Ailes (emphasis added).

To determine the effectiveness of its program, the De-

partment of the Army retained Arthur D. Little, Inc., a private industrial and management research firm, to evaluate and make recommendations regarding the Army's civilian marksmanship program. The Arthur D. Little study reached the conclusion that the civilian marksmanship program:

> . . . contributes significantly to the development of rifle marksmanship proficiency and confidence in the ability to use a rifle *effectively in combat* on the part of those who participate in the program or benefit indirectly from it.

A. D. Little, Report to Department of the Army, 1966, p. 15 (emphasis added). Without belaboring the point, it is clear that there is a demonstrable relationship between experience in the use of firearms and military proficiency and that evidence to that effect will be available at trial. Had such evidence been in the record in *United States v. Miller*, that case could not have been so decided.

G. *Permissible Limitations On the Right to Keep and Bear Arms*

Although the right to keep and bear arms is granted by the Constitution, it does not necessarily follow that no legislation affecting that right can be sustained. There is a strong argument that the prohibitions are absolute, *see* H. Black, "The Bill of Rights," 35 N.Y.U. L. Rev. 865, 873 (1960). However, the alternative argument of a "balancing test" may also be applied. Just as libel laws have been held valid for the punishment of abusive free speech, so too laws for the abuse of the freedom of possession of firearms are undoubtedly valid. Thus, the right to keep arms may be denied to certain individuals, such as convicted felons, *United States v. Tot*, 131 F.2d 261 (3d Cir.

1942), and is not necessarily infringed by laws prohibiting the bearing of concealed weapons without a license, *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897) (dictum). Obviously certain types of uses may be prohibited and possession of certain "non-militia" categories is not protected. *Aymette v. State*, 2 Humphr. (21 Tenn.) 154 (1840). *See, e.g.*, 42 U.S.C. § 2122 (possession of atomic weapons unlawful). One need not contend that there are no restrictions on the keeping and bearing of arms in order to contest the position that the right does not exist.

III. It Has Been Argued That There Is No Infringement of the Right to Keep and Bear Arms in the Present Statute Since it "Merely" Requires Registration of Dealers and Reporting of Transactions

It is the position of Amicus that while such laws do not constitute total abridgment of the right to keep and bear arms, they do constitute a substantial infringement. What public purpose can be served, for example, by a gun registration act? Unless the government has the right to confiscate, it is an invasion of privacy to require owners to register their guns. Provisions of the present act will result, over a course of years, in developing a gun registration program. The fact of the matter is that any pervasive national gun registration program places the power to confiscate weapons in the hands of the central government. That latent power would be destructive of the passive right guaranteed by the Second Amendment.

IV. This Case Is Appropriate for Decision. The Court Should Determine to Hear and Decide This Case

This case is appropriate for decision on this important question since it presents the issue squarely to the Court. Having been resolved in the lower court by a motion to dismiss before trial and a denial of a motion to amend, the issue tendered is clear: Does the Second Amendment give any rights to individuals? The evidentiary questions applying the facts of this specific case, the petitioner's specific situation, and other factual matters will be resolved at a future trial if the court determines that there is any basis upon which an individual may assert rights under the Second Amendment. Should this court take the major step of determining that there are no individual rights under the Second Amendment, then legislatures of our country will be able to rely upon the court's decision to determine their course of action in gun registration statutes.

CONCLUSION

What Amicus asserts is a basic right of freemen to take up arms to defeat an oppressive government. This right was expressly granted to the Barons in the Magna Carta (§ 61), and was broadened by the 18th Century to be a right held by all Englishmen. Blackstone listed the "Right to Bear Arms" in his chapter on "Absolute Rights of Individuals," calling it a device "to restrain the violence of oppression," 1 Blackstone, *Commentaries* 143 (14th ed. 1803), and had the following observation, after classifying the rights of person and property:

> And, lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administra-

> tions and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and lastly, *to the right of having and using arms for self-preservation and defense.* (Emphasis added; spelling modernized.)
>
> I Blackstone, *Commentaries* 144 (14th ed. 1803).

Thus, viewed as a political right, resort to the power vested in the people by the right of keeping and bearing arms is a right to be exercised only in extremis, as a last resort. So long as the government is responsible to the people, as it is today, it will always appear that a particular public interest overwhelms the latent general interest in the right to keep and bear arms. Therein lies great danger. For when the government ceases to be responsive to the populace, then the right to keep and bear arms is necessary as a restraint on a potentially or actually tyrannical government. But then the right will have atrophied beyond use unless it has been protected assiduously by our citizens and our courts.

Respectfully submitted,

DAVIS, WRIGHT, TODD,
RIESE & JONES

RICHARD A. DERHAM
Attorneys for Citizens
Committee for Right
to Keep and Bear Arms

APPENDIX I

SUMMARY OF DISTRICT AND CIRCUIT COURT CASES CONSTRUING THE SECOND AMENDMENT

1. *Cases v. United States*, 131 F.2d 916 (1st Cir. 1942), *cert. denied*, 319 U.S. 770 (1943).

Cases was convicted for transporting and receiving a firearm and ammunition in interstate commerce. The court followed the *United States v. Cruikshank* reasoning (discussed in Brief at 5-6), and concluded that the right to keep and bear arms is not a right "conferred upon the people" but that the Second Amendment simply prevents the federal government from infringing upon that right. The court added that it was impossible to formulate any general test to determine the limits of the Second Amendment and that a case by case decision was necessary.

2. *United States v. Adams*, 11 F. Supp. 216 (S.D. Fla. 1935).

A demurrer was filed to an indictment for violation of a national firearms act. The court held that the Second Amendment "does not grant the privilege to racketeers and desperadoes to carry weapons of the character dealt with in the act." To that extent, the decision is properly sustainable on the grounds that a reasonable classification has been formulated by the statute. The court continued to assert that the Second Amendment refers to the "militia and protective force of government; to the collective body and not individual rights." This was clearly dictum and unsupported by any prior decision of this court.

3. *United States v. Johnson*, 441 F.2d 1134 (5th Cir. 1971).

The court simply quoted the *Miller* decision regarding the lack of evidence in that case, and treated it as dispositive.

4. *United States v. Lauchli*, 444 F.2d 1037 (7th Cir. *cert. denied*, 409 U.S. 868 (1971)).

The court dismissed without discussion a claim raised under the Second Amendment.

5. *United States v. McCutcheon*, 446 F.2d 133 (7th Cir. 1971).

In a brief decision the court simply stated that it was sufficient to rely upon the decision of *United States v. Miller*.

6. *United States v. Decker*, 446 F.2d 164 (5th Cir. 191).

The court here also relied upon *United States v. Miller* and commented that there was no evidence indicating a conflict between the sections challenged and the maintenance of a well-regulated militia.

7. *United States v. Williams*, 446 F.2d 486 (5th Cir. 1971).

The court again misread *United States v. Miller* and stated that it disposed of the constitutional challenge.

8. *United States v. Gross*, 313 F. Supp. 1330 (S.D. Ind. 1970), aff'd. on other grounds, 451 F.2d 1355 (7th Cir. 1971).

The case here dealt with a challenge to federal requirements that dealers be licensed and the court commented that there was no evidence in the record that licensing of dealers destroys or impairs the efficiency of a well-regulated militia.

9. *Cody v. United States*, 460 F.2d 34 (8th Cir. *cert. denied*, 409 U.S. 1010 (1972)), properly construes *United States v. Miller* and finds no evidence in the *Cody* record upon which to find the act unconstitutional. From the context of the opinion it would appear that constitutionality was a subsidiary line of defense. There is no indication that Cody attempted to make an evidentiary hearing on the subject.

10. *United States v. Day*, 476 F.2d 562 (6th Cir. 1973), dismisses a claim based on the Second Amendment as "meritless" without discussion and citing *United States v. Miller*.

11. *Eckert v. Philadelphia*, 477 F.2d 610 (3rd Cir. *cert. denied*, 414 U.S. 839 (1973)).

A per curium decision, the court rejected a claim that a

city ordinance regulating the purchase and sale of firearms was unconstitutional. Relying, presumably, upon the decision in *United States v. Cruikshank*, the court stated that the appellant was "completely wrong" in his claim that the right to keep and bear arms is a right granted by the United States Constitution.

APPENDIX II

PERTINENT EXTRACTS FROM WILLIAM MacNEIL'S *THE RISE OF THE WEST* (University of Chicago Press, 1963)

1. Second Millenium B.C.

   Development of the chariot allowed the "barbarians" to conquer the Fertile Crescent, altering the political and social life of the societies, Pg. 104-106.

2. 1700-1500 B.C.

   Power in hands of charioteers made the exercise of power by the new leaders in the old manner of Hammurabi inconceivable. He would have seemed a tyrant in the eyes of his fellow warriors and been overthrown, Pg. 123.

3. 1200-1000 B.C.

   Discovery of cheap steel smelting techniques facilitated widespread use of steel weapons, making it possible for commoners to afford effective weapons, so that the infantryman equalled the charioteer—thus alienated subjects could equal the aristocratic military and the regime fell, Pg. 117-18.

4. 1200-1000 B.C.

   "The abundance of iron had democratized warfare, so that extensive aristocratic empires no longer accorded with military realities." This effect was accompanied by a return to "political localism." Pg. 124.

5. 600 B.C.

   The same forces operated in Indian civilization and the noble charioteers had lost supremacy by the Sixth Century. Pg. 171.

6. 1600-1000 B.C.

   The main prop of Mycenaean social structure was the autocratic character of the warfare of the age. Chariots in Greece confirmed or established "the power of an aristocracy, whose members alone could afford the elaborate equipment necessary for chariot warfare." Pg. 190.

7. 1000-600 B.C.

   Ancient Greece was dominated by noble families strong enough to limit the monarchy. "Horsemen had many advantages: they could move rapidly to surprise an enemy and charge with a momentum difficult for struggling infantry to oppose. But only men of considerable agricultural wealth could become cavalrymen, for natural grass was so scant in Greece that horses had to eat grain through most of the year. Thus, in proportion as cavalry became decisive in battle, noble landowners increased their influence in public affairs." Pg. 196.

8. Increased democratization and dispersion of political power resulted from the rise of the infantry, as the decisive factor on the battlefront. "An important change in military tactics checks, for a few centuries, the drift of Greek society toward the Middle Eastern patterns of polarization between a leisured aristocracy and an oppressed, poverty-stricken populace . . . The phalanx, therefore, was the school which made the Greek polis . . . [I]t greatly broadened the class of citizens who took an active part in polis affairs, for the hoplites who defended their cities in the battlefield could hardly be excluded from participating in civil affairs." Pgs. 198-200.

9. 200 B.C.-200 A.D.

   The Parthians were the first to adopt the "feudal" solution to the problem of defense from barbarian raids. Heavy horses and elaborate armor were needed, requiring villages to become part of a military system, which could support a new horse-mounted aristocracy. In turn, this resulted in a centralization of land power and disparity in wealth, but a decentralization of national power, since independent aristocrats might not answer the summons of their monarch. The result was a "medieval" pattern. Pgs. 393, 396.

10. 800-1200 A.D.

    The West also found that the cure for barbarian invasion was local self-defense conducted by "strong-armed and often insubordinant knights." Pg. 540.

11. 1300-1500 A.D.

A large segment of European society participated in the war and politics of medieval Europe: The pikemen of Switzerland and the bowman of England could challenge the aristocratic knights. "The result was to mobilize greater human resources within European society than was possible within the more rigidly hierarchical societies of other civilized lands." Pg. 558-59. See also, generally, Oman, The Art of War in the Middle Ages, Oxford University Press, treating the question of Swiss independence.

12. 1500-1650 A.D.

Concentration of power in the central government grew because of the developments in firepower. "As European armaments became more elaborate and expensive, monarchs could more easily monopolize organized violence within their states, thus strengthening domestic sovereignty." Pg. 582.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-11

LEWIS GENE FREEMAN, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a gun collector to whom out-of-state purchase of firearms was refused because he was not a licensed dealer, brought this suit for declaratory and injunctive relief in the United States District Court for the Southern District of Indiana, asserting (1) that the record-keeping and inspection provisions of the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213, violate the Ninth Amendment, and (2) that the Act's prohibition of interstate shipment and sale of firearms to non-licensees violates the Second Amendment. The district court dismissed the complaint, and the court of appeals affirmed (App. 42a-45a).

Petitioner's constitutional claims are insubstantial. The licensing requirements and related prohibitions of the Gun Control Act of 1968 do not abrogate the Second Amendment right to keep and bear arms. *Cody* v. *United States*, 460 F. 2d 34, 36-37 (C.A. 8), certiorari denied, 409 U.S. 1010; *United States* v. *Lauchli*, 444 F. 2d 1037, 1041 (C.A. 7), certiorari

denied, 404 U.S. 868; *United States* v. *Wilson,* 440 F. 2d 1068, 1069 (C.A. 6). See also, *United States* v. *Miller,* 307 U.S. 174. Nor do the record-keeping and inspection provisions of the Act infringe upon the Ninth Amendment privacy interests of gun dealers or purchasers. *United States* v. *Biswell,* 406 U.S. 311, 315-316.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-11

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

DAVID I. CAPLAN
Attorney for Petitioner
250 West 94th Street
New York, New York 10025

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-11

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

Recent events involving the Presidency, which have occurred since the filing of the Petition for Certiorari, would have been considered as merely fanciful only a few years ago by most jurists and legal scholars. Yet, these events vindicate the views of our Founding Fathers on the importance of the Second Amendment right of the people to keep Arms. For but a month ago, "there was concern that an order could go to a military unit outside the chain of command for some sort of action against Congress during the time between a House vote for impeachment and a Senate trial on the impeachment charges." Ed Good-

paster, *Last Nixon Days: Watch Kept on the Pentagon,* New York Post, August 24, 1974, p. 5. Indeed, there was specific fear in high places of government that "Mr. Nixon or one of his aides might get in touch with some military units directly without going through the usual chain of command and order that some action be taken to block the 'constitutional process'." Bernard Gwertzman, *Pentagon Kept Tight Rein In Last Days of Nixon Rule,* New York Times, August 25, 1974, p. 1. And, of course, there was the ever present danger of "a 'legal' takeover since it would be ordered by the President as Commander-in-Chief." Army Times, *Army Seizes United States In 'Esquire' Plot,* April 10, 1974, annexed as p. 92a to the Appendix Accompanying the Petition for Certiorari. Thus, recent events bring into sharp focus the dangers of the Gun Control Act of 1968 outlined in the Petition for Certiorari herein, pp. 33-34; and these events confirm the fundamental importance of anonymous Arms-keeping in the hands of the people at large as our Founding Fathers would have it.

Although the Memorandum for the United States flatly states that the challenged provisions of the Gun Control Act of 1968 "do not *abrogate* the Second Amendment *right* to keep and bear arms" (Memo. for United States, p. 1, emphasis added); nevertheless, the issue in this case involves the question whether the challenged provisions of the Gun Control Act *infringe* the *right* of the *people* to keep and bear Arms (Second Amendment). And this question is hardly insubstantial:

> "Since this decision [*United States* v. *Miller,* 307 U.S. 174], Congress has placed greater limitations on the receipt, possession and transportation of firearms [;] and proposals for national registration or prohibition

of firearms altogether have been made. [Citing: Gun Control Act of 1968; National Commission on Reform of Federal Criminal Laws, *Working Papers* (Washington, 1970), 1031-1058, and *Final Report* (Washington, 1971), 246-247.] At what point regulation or prohibition of what classes of firearms would conflict with the (Second) Amendment, whether there would be a conflict, the *Miller* case does little more than cast a faint degree of illumination toward answering."

> *The Constitution of the United States, Analysis and Interpretation,* Congressional Research Service, Library of Congress. Senate Document No. 92-82, 92d Congress, 2d Session (U.S.Gov't Printing Office, 1973), 1036.

And as to the reliance of the Memorandum for the United States at p. 2 on the *obiter dicta* of *United States* v. *Biswell*, 406 U.S. 311 at 315-316, see the Petitioner's Petition for Certiorari at p. 16 (pointing out the failure of the parties in that case to have raised any of the relevant constitutional issues therein). Therefore, the cavalier attitude of the Memorandum for the United States in opposition to the instant Petition for Certiorari is simply not justified. For no case has ever come to grips with Petitioner's fundamental contentions regarding the interplay of the Second and Ninth Amendments and the consequent relationship to the preservation of our form of government.

It is therefore respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

David I. Caplan
Attorney for Petitioner
250 West 94th Street
New York, New York 10025

October, 1974